

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re the Matter of: : 05-44481
DELPHI CORPORATION, et al., : One Bowling Green
Debtors. : New York, New York
: November 29, 2005
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TRANSCRIPT OF MOTIONS
BEFORE THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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1 THE COURT: Please be seated.

2 Delphi Corporation.

3 MR. BUTLER: Your Honor, Jack Butler from the law
4 firm of Skadden, Arps, Slate, Meagher & Flom with my partners,
5 Kayalyn Marafioti [Ph.], John Lyons [Ph.] and David Springer,
6 here for Delphi's second omnibus hearing, the hearing scheduled
7 for November 2005.

8 Your Honor, before we begin the agenda, just as a
9 procedural matter, we have filed and served the proposed second
10 amended agenda. The agenda has 32 matters in it. With the
11 Court's permission, we would follow the agenda in the order
12 that it's presented.

13 THE COURT: All right.

14 But I understand from my clerk that you wanted to
15 have one matter be heard in the afternoon?

16 MR. BUTLER: Your Honor, there are many people here
17 on the contested evidentiary matter. There are 31 matters that
18 need to be dealt with prior to the contested evidentiary matter
19 and there is an additional meet and confer conference that has
20 been scheduled with the Court's permission between the
21 committee indenture trustee and the debtors and so we'd like to
22 have sort of a time early this afternoon and that way people
23 who are here just on that matter don't need to sit through
24 three hours of other things.

25 THE COURT: Okay.

1 The matter you're referring to is the so-called
2 assumption matter?

3 MR. BUTLER: Right.

4 The supplier agreement assumption procedures matter,
5 Matter 32, which is the only contested evidentiary hearing on
6 the agenda today.

7 THE COURT: All right.

8 I think that's fine to have that additional
9 discussion with the committee.

10 So, those of you who are here on that matter, the
11 supplier contract assumption matter, so-called, are free to
12 leave because your matter won't come on until 2:00.

13 MR. BUTLER: Your Honor, could I also just on the
14 record indicate that if there are suppliers who are here who
15 would like to talk with representatives of the debtors, my
16 partner, John Lyons, who is right over here will be out in the
17 hallway to talk with suppliers about any individual questions
18 or concerns they might have during the morning call.

19 THE COURT: Okay.

20 Let's give people a bit of time to move out.

21 (Pause in proceedings.)

22 THE COURT: Mr. Butler, since the rest of the agenda
23 doesn't have any evidence you can use that seat if you want.
24 You can bring it down below unless you want to sit there.

25 (Pause in proceedings.)

1 THE COURT: Okay.

2 MR. BUTLER: Thank you, Your Honor.

3 Your Honor, again, in connection with -- just one
4 announcement we wanted to also make to the Court and we'll be
5 submitting a separate order to chambers, yesterday Delphi
6 issued a press release that announced that it and General
7 Motors had agreed to accelerate discussions in connection with
8 the matters between General Motors and Delphi that are
9 important to the restructuring in this case. General Motors
10 agreed to provide some interim financial support to Delphi
11 through not going forward with certain price downs that were
12 contractually committed to and the debtors believe that gave
13 them the opportunity to continue if you will on the negotiation
14 track with the principal parties in this case as it relates to
15 labor and human (sic) capital with our principal customer,
16 General Motors, and as a result the company announced that it
17 would seek to have an order entered in this Court that would
18 adjourn the date by which the debtors would file an 1113/1114
19 motion from December 16th to January 20, 2006. We have a form
20 of proposed order that would then reset the dates. We've asked
21 the contact at chambers to get dates for the rest of the order
22 and we'll submit that some time before the end of the week for
23 Your Honor's consideration.

24 THE COURT: Okay.

25 That's fine.

1 I think that the one date that's not going to work is
2 the hearing date that you had because I'm going to be gone that
3 week, the week of the 20th of February.

4 So you can pick a date right after that. You can
5 make it the following Monday.

6 (Pause in proceedings.)

7 THE COURT: So the one day that doesn't work is the
8 28th which is a Refco omnibus day but the 27th or the 1st of
9 March would work.

10 MR. BUTLER: Thank you, Your Honor.

11 We'll confer and consult with chambers and submit the
12 order.

13 THE COURT: Okay.

14 MR. BUTLER: Your Honor, now turning to the omnibus
15 agenda and the 31 matters now on for this morning's session.

16 Matter No. 1 is the remaining portion of the interim
17 compensation motion originally filed as docket No. 11. The
18 Court has previously established interim compensation
19 procedures through an order entered at docket No. 869. What
20 remains is the presentation of an order establishing a joint
21 fee review committee in this case or a fee review committee.
22 We are in discussions with the U.S. Trustee about the
23 procedures in connection with that. We want to also consult
24 with the creditors committee and just with the press (sic) of
25 activities, the U.S. Trustee asked if we could present this on

1 January 5th.

2 THE COURT: Okay. That's fine.

3 MR. BUTLER: Your Honor, the second matter that is on
4 the agenda is a motion for an order approving the debtor's key
5 employee compensation program at docket No. 13. This was filed
6 originally on or about October 12th or 13th. It was scheduled
7 for a hearing today. There was an objection deadline as to all
8 parties for November 22nd. That was extended briefly for the
9 United States Trustee. There were some technology problems.
10 They have since filed their papers and it has been extended to
11 December 12th with respect to the creditors committee and the
12 company and the committee continue to meet in connection with
13 the program and we are asking the Court now to set that over to
14 January 5, 2006.

15 THE COURT: Okay.

16 MR. BUTLER: The next matter on the agenda, Your
17 Honor, is matter No. 3 which is the final hearing on the claims
18 trading order. This was originally filed at docket No. 29 and
19 there was an interim order approved by Your Honor that has been
20 controlling in this case and continues to control. That is
21 entered at docket No. 126.

22 We're requesting that the matter be adjourned to the
23 January 5, 2006 hearing with respect to the objections filed at
24 docket numbers 76 and 1117 pursuant to an agreement between
25 those parties and the debtors with a full reservation of rights

1 as to all parties-in-interest and we are pleased to advise the
2 Court that the matter with respect to the response filed by
3 Appaloosa Management, LP has been resolved.

4 THE COURT: Okay.

5 Are they being treated like the earlier objectants?

6 MR. BUTLER: Yes, Your Honor, I believe that they
7 are.

8 THE COURT: Okay.

9 MR. BUTLER: There may be some additional matter with
10 regard to Appaloosa but to the extent there is that would also
11 be extended over to January 5th.

12 THE COURT: Okay.

13 MR. BUTLER: Your Honor, the next matter on the
14 agenda, matter No. 4, is the utilities motion with respect to
15 any objections that have been presented and I'm pleased to
16 report this matter -- this was originally filed by the way at
17 docket No. 41 and Your Honor entered an interim order at docket
18 No. 234 and a final order at docket No. 760. We have been
19 working through the objections that were reserved. As Your
20 Honor may recall, there were a few objectors reserved in that
21 final order. I'm pleased to report that we have resolved the
22 objections with respect to AT&T Corporation, Entergy [Ph.]
23 Mississippi, Inc., American Electric Power, Dominion East Ohio,
24 New York State Electrical & Gas Corporation, Niagara Mohawk
25 Power Corporation, The Public Services Electric & Gas Company

1 and the Rochester Gas & Electric Corporation.

2 That leaves, Your Honor, only, I believe, the
3 objection of SBC Communications, Inc. to the motion as the
4 only, I believe, remaining objection and that matter, which I
5 believe is docketed at docket No. 559, with the Court's
6 permission, that's being adjourned to the January 5, 2006
7 omnibus hearing.

8 THE COURT: Okay.

9 In the interim the order is governing obviously.

10 MR. BUTLER: The final order, Your Honor. This is
11 just -- and they're governed by it.

12 THE COURT: Okay.

13 MR. BUTLER: Your Honor, the next matter on the
14 agenda is matter No. 5 which is the Speckmo [Ph.] Enterprises
15 motion for relief from stay at docket No. 284.

16 This is a motion filed to lift the automatic stay.
17 There have been -- this is part of the volume of set off
18 requests, both formal and informal, that have been received.
19 We have not been able to resolve Speckmo's set off request at
20 this particular time but we're working on reconciling it and
21 there's an agreement to adjourn this matter to the January 5,
22 2006 hearing.

23 THE COURT: Okay.

24 MR. BUTLER: Your Honor, the next three matters, I
25 will briefly address, although Mr. Berger is handling them and

1 Mr. Berger can report on the status. I'll just take them
2 together and Mr. Berger can report on the status. They're the
3 Schmidt [Ph.] Technology, Gmbh., order to show cause at docket
4 No. 477. The order to show cause was entered at docket No.
5 816. The Lee Company is an order to show cause at docket No.
6 699 and the order was entered at docket No. 842 and item No. 8
7 on the agenda, Baer [Ph.] Industries, is the order to show
8 cause, docket No. 774 and Your Honor entered an order at docket
9 No. 1119.

10 We're asking these to be adjourned to the January 5th
11 hearing but I think Mr. Berger has an update on these matters.

12 MR. BERGER: Speckmo Industries, Schmidt Technology
13 and Lee Company are all parties that we are in active review
14 and negotiations with.

15 In Speckmo, we're meeting and trying to reconcile
16 pre-petition obligations and claims. Schmidt Technology, No.
17 6, Your Honor, asserts status as a foreign vendor. We are at
18 the tail end of the debtor's investigation to determine whether
19 or not Schmidt fits within that definition under Your Honor's
20 protocol, whether or not specifically it has assets and subject
21 in the United States to this Court's jurisdiction. If it is,
22 we note counsel for Hirschman (sic) and we think that we'll be
23 able to work through those issues. The Lee Company for the
24 most part is resolved, Your Honor. It appears that we'll be
25 able to submit an order to the Court either before or after the

1 January 5th adjourn date.

2 THE COURT: Okay.

3 MR. BUTLER: Your Honor, the next three motions are
4 all -- one is a motion -- I'll just walk through them -- No. 9
5 is a demand exercise set off by Decketer [Ph.] Plastic
6 Products, Inc. at docket No. 799. No. 10 is the Tricon [Ph.]
7 Industries, Inc. motion for modification of automatic stay,
8 again, for docket No. 805. No. 11 is the Meens [Ph.]
9 Industries motion to set off pre-petition payment against pre-
10 petition claims. Another set off matter at docket No. 818 and
11 then, I think, similarly, although it's a slightly different
12 fact pattern, No. 12 is Eclipse Tool & Die, Inc., motions for
13 relief from the automatic stay.

14 All four of these, Your Honor -- the first three deal
15 with suppliers and customers of the debtor seeking to lift the
16 automatic stay to exercise rights of set off. The fourth is an
17 allegation from Eclipse that it is a valid lienor to the
18 Michigan Special Tool Lien Act.

19 We're reviewing all of these matters with the
20 particular movants and all have agreed to adjourn their
21 hearings to January 5, 2006.

22 THE COURT: Okay.

23 MR. BUTLER: Matter No. 13 on the agenda is also
24 somewhat similar to Mercedes Benz U.S. International, Inc.
25 motion for relief from the automatic stay. It's filed at

1 docket No. 983 and we're working along the same lines with
2 Mercedes Benz. They've also agreed to move their matter to
3 January 5, 2006.

4 Your Honor, matter No. 14 is a little bit different.
5 This is Niagara Mohawk matter. This is our motion authorizing
6 the debtors to obtain preferential power rates pursuant to a
7 letter agreement with Niagara Mohawk Power Corporation to
8 assume it at docket No. 997.

9 This particular transaction -- there's a regulatory
10 matter that requires the consent of the New York Power
11 Authority. They were scheduled to meet on November 22, 2005
12 but the Power Authority has rescheduled their meeting until
13 December. Accordingly, we ask the Court to move to the January
14 5th hearing so we can get that decision first.

15 THE COURT: Okay. That's fine.

16 MR. BUTLER: Your Honor, matter Nos. 15 and 16 also
17 are motions for set off; one by Entergy and that's for both
18 recoupment and set off. At docket No. 1024 and item No. 16 on
19 the agenda, DBM Technologies, LLC, is another set off motion at
20 docket No. 1042 and as with the others, they have agreed to
21 adjourn these matters to January 5, 2006.

22 The last item on the adjourn docket, Your Honor, is
23 the lead plaintiff's motion for limited modification of the
24 automatic stay. This is docket No. 1063. This is a little bit
25 different, Your Honor. This is a request by the lead

1 plaintiffs in what the debtors believe is subordinated
2 securities claim litigation to lift the automatic stay to
3 require the production of documents and limited discovery and
4 we're in the process of meeting with them to discuss that
5 matter and have meet and confers during the course of December
6 and, therefore, we have asked to move that to the January 5,
7 2006 agenda with a deadline to file our objection on December
8 29, 2005.

9 THE COURT: All right. That's fine.

10 MR. BUTLER: Your Honor, now moving to the
11 uncontested agreed or settled matters, the first one is the
12 Macato [Ph.] USA, Inc. order to show cause at docket No. 785.
13 That's been handled by Mr. Berger.

14 MR. BERGER: Good morning, Judge.

15 Your Honor set in motion in the early days of the
16 case a procedure by which the debtors could obtain orders to
17 show cause to bring vendors before Your Honor; those vendors
18 being those that threaten to disrupt or withhold delivery of
19 goods on account of payment of pre-petition balances.

20 The orders to show cause were designed to bring those
21 vendors before Your Honor to describe why they weren't in
22 violation of the automatic stay and why those funds should not
23 be disgorged.

24 A number of orders to show cause were filed among
25 Your Honor's dockets this morning. We're working through all

1 of those orders to show cause toward settlements favorable to
2 the debtor. We reached final agreement with Macato. It's only
3 on the agenda this morning and we have a proposed order, Your
4 Honor, that provides in pertinent part that the \$966,000.00
5 that Macato extracted from the debtors was repaid to the
6 debtors. Based upon that and the parties' other agreements as
7 to timing of payments for post-petition goods we've come up
8 with a form of order that counsel for Macato has reviewed and
9 approved and I have it here for you, Your Honor.

10 THE COURT: Okay.

11 And that's the order that was earlier submitted, the
12 proposed order?

13 MR. BERGER: Correct, Your Honor.

14 THE COURT: All right.

15 I'll approve that.

16 MR. BERGER: May I approach?

17 THE COURT: Yes.

18 MR. BERGER: Thank you, Judge.

19 MR. BUTLER: Your Honor, the next matter on the
20 agenda is matter No. 19. This is the debtor's motion for an
21 order under 11 U.S.C. Section 365(d)(4) to extend the deadline
22 to assume or reject leases of non-residential real property
23 filed at docket No. 995.

24 We're asking Your Honor to extend that period from
25 December 7, 2005 to and including June 7, 2007, a date which is

1 eighteen months from the initial deadline within which the
2 debtors were otherwise required to assume or reject the real
3 property leases.

4 The debtors are parties to approximately 90 real
5 property leases, in most instances as lessee, some 85 of those.
6 In a minority of instances, we have a separate interest and in
7 some cases of a lessor.

8 The debtors have asked that this be entered without
9 prejudice to our rights to seek further extensions and without
10 prejudice to a lessor's rights to seek a shortening of those
11 deadlines for cause.

12 I'm pleased to report, Your Honor, that only one
13 objection was filed to this particular motion by Orricksworn,
14 LLC [Ph.] at docket No. 1123. That matter has been resolved.
15 With respect to the Orricks, they have -- what we did with
16 respect to Orricks is they have agreed that they would be
17 subject to the eighteen month period but that after twelve
18 months they would have the right to file a supplemental
19 objection on or prior to October 1, 2006 and bring the
20 additional six month (inaudible) back to the Court as it
21 relates to them alone.

22 THE COURT: Okay.

23 MR. BUTLER: And that's the way they chose to resolve
24 that so they have what I would call a springing objection
25 opportunity -- a window next fall.

1 THE COURT: All right.

2 Although this is without prejudice to anyone's rights
3 if circumstances change to seek a shorter period.

4 MR. BUTLER: Correct.

5 Anyone can come in. The order specifically provides
6 for cause shown under the statute. People can come in earlier.

7 THE COURT: All right.

8 In light of the notice given to the landlords and the
9 lack of objections or the resolution of the one objection, I'll
10 grant this.

11 MR. BUTLER: Thank you, Your Honor.

12 Your Honor, we're now moving to matter No. 20, the
13 retention matter. This is the debtor's application to
14 authorize the employment retention of Jones, Lang, LaSalle
15 Americas, Inc. [Ph.], as real estate administrative and
16 transaction service provider. It's docketed, docket No. 996,
17 no objections have been filed.

18 Just briefly, Your Honor, JLL provides a large
19 component of professional services to the debtors including
20 maintaining the debtor's real property information database,
21 coordinating all the lease real estate related payables. They
22 deal with issuance of recommendations regarding notice
23 provisions, expiration dates, other actions and they act if you
24 will as a manager of our portfolio. They perform initial
25 evaluations and abstract all real property interests. They

1 provide strategic real estate advisory advise. They perform
2 in-house lease administration. I sort of view this -- having
3 been on site and seen the facility -- that this is a function
4 that is partly outsourced if you will by the debtors to Jones,
5 Lang, LaSalle. They also serve as providing real property
6 purchase and sales services and deal with facility planning and
7 strategy.

8 It is an extremely important contractual relationship
9 that the debtors have and the application -- we had if Your
10 Honor wanted to hear more, Mr. Sheehan, our vice president in
11 charge of restructuring is here with us today as is James C.
12 Baker, managing director of Jones, Lang, LaSalle, Inc.

13 But there have been no objections filed, Your Honor,
14 and we'd like to ask Your Honor to consider approval of the
15 retention.

16 THE COURT: Okay.

17 I don't have any problems with the retention per se
18 as you said it. It really appears to me to be largely an
19 outsourcing function plus market rates for brokerage services
20 but the order was ambiguous and I've made it clear that the
21 compensation is pursuant to Sections 330 and 331 to be
22 consistent with the motion itself which suggests that.

23 The only other thing I would say is that given the
24 profit element of the firm's compensation, I assume that there
25 is someone, even though this is an outsourced function, who

1 will review their activities and if the lease portfolio duties
2 change significantly, we'll tell them to reduce their staff in
3 case they don't do it themselves.

4 MR. BUTLER: Absolutely, Your Honor.

5 Karen Healey [Ph.] is one of the officers of the
6 company and is responsible for facilities management for Delphi
7 Corporation on a global basis. This function reports up
8 through people on her staff to her and I have personally spent
9 time with her on this particular issue.

10 I should point out, Your Honor, Jones, Lang, LaSalle,
11 their involvement is relatively new to the company. They
12 replaced another facility manager that had been providing that
13 and it was precisely the oversight function I think Your Honor
14 was concerned about and that is they're interested in just
15 making sure -- the company thought they could improve the
16 management of that dysfunction and that's how Jones, Lang &
17 LaSalle came to be.

18 THE COURT: Okay. That's fine.

19 So with that small change I'll approve the order.

20 MR. BUTLER: Thank you, Your Honor.

21 Your Honor, matter No. 21 is our motion to authorize
22 the debtors to preserve an option entering into a new power
23 contract for preferential rates with Consumers Energy Company
24 and related power contracts. It's sort of similar to the
25 earlier motion that I talked briefly about that's been

1 adjourned but this is a request for Delphi Automotive Systems,
2 LLC to assume two contracts with Consumers Energy. First, is a
3 special manufacturing contract dated October 13, 1995, the
4 other is a partial assignment contract dated December 22, 1998.
5 These contracts provide the debtors with the opportunity to
6 receive electrical power for six of their manufacturing sites
7 in Michigan and there are specific terms of conditions set
8 forth in the agreement that the debtors believe are beneficial
9 and by assuming these contracts Delphi Automotive Systems, LLC
10 is entitled to receive preferential rates from Consumers with
11 respect to a new power contracts; power service is to be
12 retained at these facilities and at other potential locations.

13 The debtors believe, Your Honor, that this is another
14 exercise of reasonable business judgment by the debtors. We
15 think it's a very useful way of being able to make sure that
16 we're obtaining power which is a pretty important commodity of
17 our business to power manufacturing sites at as reasonable a
18 price as we can obtain.

19 We've described all of the specific relief in the
20 motion and no objections have been filed.

21 THE COURT: Okay.

22 I have a question about this which is as I understand
23 these contracts are expiring at the end of the year?

24 MR. BUTLER: Some of them are, Your Honor, expiring
25 and then the way this works with Consumers is to be able to

1 maintain the preferential rates we have to have authority then
2 to enter into the new power agreement and so, you're right, as
3 I understand the negotiations -- and they're fairly complicated
4 -- but as I understand the way this has worked in order to be
5 eligible to enter in to the new power contract with them and
6 maintain the preferential rates we need to assume these
7 contracts in the Chapter 11 case and enter into a new power
8 contract.

9 THE COURT: My question is is that just something
10 they're saying or have you all reviewed the agreements to see
11 whether they have the right to cut you off that way?

12 MR. BUTLER: Your Honor, I haven't personally
13 reviewed the agreement. The people working on this believe
14 that this was appropriate and in fact we had specifically
15 Donald Poole [Ph.], who is a manager of the utility supply
16 group was the individual who worked on --

17 THE COURT: I know. I reads his affidavit and all he
18 says is that, "Consumers Power tells us that they won't do this
19 unless the contract is assumed" but he quoted some language
20 from the Michigan regs. that suggested otherwise.

21 MR. BUTLER: Your Honor, my colleague, Mr. Meisler
22 [Ph.], simply points out, who has done more work on this,
23 simply said that Consumers Energy has the rights under their
24 rate tariffs to make these determinations as to whether we're
25 eligible to get the preferential rates --

1 THE COURT: So it's not a --

2 MR. BUTLER: -- and that's a judgment on their part
3 and this is what's being required.

4 THE COURT: It's not a right under Michigan law to
5 the party receiving the rate?

6 MR. BUTLER: I believe that's correct, Your Honor.

7 THE COURT: Well, is this something the committee has
8 reviewed?

9 MR. ROSENBERG: Your Honor, to be perfectly honest,
10 the committee reviewed it on an economic level via Messerow
11 (sic) and was satisfied on an economic level but we have not
12 reviewed the specific question that Your Honor is raising.

13 THE COURT: Okay.

14 Well, of course, they're related because if you don't
15 have to pay the \$3.5 million of cure costs then the economics
16 are all the better.

17 MR. ROSENBERG: Your Honor obviously read our papers
18 for this afternoon's motion and I apologize that we did not do
19 this with respect to this motion. We simply looked at the
20 economics.

21 THE COURT: All right.

22 Is there an actual option in the contract?

23 MR. BUTLER: Your Honor, I don't believe that there
24 is. I believe that this was a product of discussions with
25 Consumers Energy. From the company's perspective, what hangs

1 in the balance here is about \$10 million a year in preferential
2 rates. So, again, as the committee did, this, from an economic
3 perspective is as we understand the ability to qualify for
4 preferential rates in Michigan, this was a pretty
5 straightforward business decision. It's \$10 million a year for
6 two to four years of benefits we give up and a much smaller
7 cure payment.

8 THE COURT: Well, the issue is whether you need to
9 make the cure payment to get the benefits. The benefits are
10 great.

11 MR. ROSENBERG: Your Honor, perhaps we can take a
12 break on this one and --

13 THE COURT: I think that's worthwhile --

14 MR. ROSENBERG: -- and look at the legal issues that
15 Your Honor is raising?

16 THE COURT: It should be fairly evident in the
17 agreement.

18 MR. ROSENBERG: It should, indeed, be and --

19 THE COURT: I would think that CEC should be able to
20 point to something that gives them the absolute discretion
21 here.

22 So why don't we adjourn this to 2:00.

23 MR. BUTLER: Okay, Your Honor.

24 Your Honor, the next matter on the agenda is matter
25 No. 22. This is the Wilmer, Cutler, Pickering, Hale & Dor

1 retention as special regulatory counsel. It's filed at docket
2 No. 999. The debtors do in fact rely on Wilmer, Hale -- as
3 they're referred to now -- as their special regulatory counsel
4 on a variety of capacities that are described more clearly and
5 completely in the retention application.

6 There have been no objections filed by any party to
7 the retention.

8 THE COURT: I'll approve this retention.

9 MR. BUTLER: Thank you, Your Honor.

10 Matter No. 23 on the agenda is the Latham & Watkins
11 retention filed by the official committee of unsecured
12 creditors, filed at docket No. 1086. This is proposed to be
13 nunc pro tunc to the date of appointment on October 17, 2005
14 and the debtors support that appointment, Your Honor, nunc pro
15 tunc to October 17th.

16 The committee has given the debtors the opportunity
17 to review the disclosures and the application as to the debtors
18 only through the next hearing on January 5, 2006. The order
19 would otherwise be final as the other parties did not object as
20 of today's hearing.

21 THE COURT: Okay.

22 Again, I reviewed this as well as the marked interim
23 order and hearing no objections and recognizing the debtor's
24 continuing right through the 5th, I'll grant it.

25 MR. BUTLER: Thank you, Your Honor.

1 Your Honor, the next matter on the agenda, now moving
2 to what had been contested matters and this one we have listed
3 still as a contested matter for a specific reason.

4 Your Honor, the first matter, matter No. 24, is the
5 Rothschild retention as the debtor's financial advisors and
6 investment bankers at docket No. 52.

7 This had been under discussion with the creditors
8 committee. We have reached agreement with the committee on the
9 form of proposed retention. There is a proposed order and an
10 amended restated retention agreement. That also was resolved --
11 -- questions that the agent for the pre-petition lenders had --
12 and we now have a form of agreement acceptable to those
13 parties.

14 We have listed this as contested, however, because
15 there was a letter that was received by us by Robert E. Newton
16 from Lockport, New York in which he wrote that he was compelled
17 as a Delphi retiree to voice his objection to the motion and
18 explained his concerns there.

19 THE COURT: I've read that letter.

20 MR. BUTLER: I don't know whether Mr. Newton is
21 present today in the courtroom or not.

22 (No response.)

23 MR. BUTLER: Your Honor, having not been present in
24 the courtroom and not withstanding Mr. Newton's letter
25 objection, we'd ask Your Honor to approve the retention as

1 amended.

2 THE COURT: Okay.

3 Let me just ask. Obviously, this reflects review by
4 the committee. Is it the committee's view that for a case of
5 this size this is a market-driven or market-based retention?

6 MR. ROSENBERG: Your Honor, the committee has come to
7 the conclusion that it is, both in terms of the total amount
8 and in terms of a 328 retention.

9 If Your Honor compares what we have submitted to you
10 today with our consent to the original Rothschild request, I
11 think you will see that it has been cut back in several
12 respects quite substantially and to the satisfaction of the
13 committee.

14 There is no question but that the committee would
15 have liked the retention, given the size of it, not to be under
16 Section 328. We would have liked Rothschild to be a completely
17 independent voice in the boardroom fighting for what's best for
18 the estate and we hope they will still do so even though they
19 have a 328 retention but that's a long-winded way, Your Honor,
20 of saying that notwithstanding our preference as to what the
21 market might be, we have to concede that for investment bankers
22 for the debtor and for the committee in significant, large
23 cases, a 328 retention is appropriate and, again, given the
24 negotiation that occurred right through this morning as to what
25 this retention and the order should look like, Your Honor, we

1 are satisfied with it as presented.

2 THE COURT: Okay.

3 MS. LEONHARD: Good morning, Your Honor.

4 Alicia Leonhard for the United States Trustee.

5 The United States Trustee would like to say that
6 under the protocol for investment bankers in the Southern
7 District, the United States Trustee reserves the right to
8 review the fees for reasonable --

9 THE COURT: Right and that's set forth in the
10 proposed order.

11 MS. LEONHARD: Yes.

12 THE COURT: Under Section 330.

13 MS. LEONHARD: Yes.

14 Thank you, Your Honor.

15 THE COURT: On that score, I don't see anything in
16 here about keeping time records. Has that been discussed?

17 MS. LEONHARD: Your Honor, I believe the protocol
18 calls for investment bankers to keep time records in one half
19 hour increments and if that has been changed, it was done
20 without the knowledge of the U.S. Trustee and without our
21 approval.

22 THE COURT: All right.

23 Mr. Resnick, is there --

24 MR. BUTLER: Your Honor, I think Mr. Resnick is
25 present in court today and I think Rothschild intends to file

1 the U.S. Trustee's protocol in these cases.

2 MR. RESNICK: Yes, that's correct.

3 THE COURT: Okay.

4 MR. RESNICK: I think the order contemplates, as we
5 have in other cases, that we will follow that protocol.

6 THE COURT: All right. Very well.

7 I had two specific questions and one observation --
8 well, one question and two observations; the first is the new
9 capital fee described on Page 7 has a proviso which says that
10 "no new capital fees shall become payable in respect of any new
11 capital raised (X) with respect to any debtor-in-possession
12 financing" and then it says, "(Y) from an entity not otherwise
13 participating in or not having expressed an interest in
14 participating in a transaction and I was confused why it said
15 "not." I would have thought it would have been that you
16 wouldn't get it if an entity was participating in a
17 transaction, for example -- I'm just throwing this out --
18 suppose GM provided capital in connection with the plan, I
19 would have thought that would be excluded from the financing
20 fee because that's picked up in the transaction fee.

21 I don't know if that had been focused on by the
22 parties or now. In other words, my view of the new capital fee
23 is that it would apply to something separate from the
24 transaction-related services that are being provided by
25 Rothschild as opposed to this language.

1 So unless the parties have discussed this already?

2 MR. ROSENBERG: I believe so, Your Honor, and I
3 certainly don't want to speak for Rothschild on this but I'll
4 tell you what the committee's understanding was when it agreed
5 to this.

6 The new capital fee was certainly the single, most
7 controversial piece of the original Rothschild proposal for any
8 number of reasons, not limited to its potentially duplicative
9 nature. So what has been resolved here is (1) they only get a
10 new capital fee at all if they are so designated by the debtor
11 to provide that service and the Court on notice to the
12 committee, etc., specifically approves they're providing that
13 service (sic), but again, the issue is the duplicativeness.

14 THE COURT: Right.

15 MR. ROSENBERG: On the situation that you describe
16 they'll be getting an M&A fee or a completion fee or something
17 of that sort.

18 THE COURT: Right.

19 MR. ROSENBERG: That's why it's written the way it
20 is.

21 MR. BUTLER: Your Honor, I also think -- I mean this
22 was reviewed and I was just consulting with Mr. Zeiman [Ph.],
23 who reviewed this on behalf of the pre-petition banks.

24 The way this provision operates, I believe, it says,
25 "new capital fees due and payable in cash in closing" and among

1 the requirements is that the capital has to come from an entity
2 that's not otherwise participating so I think it's exactly the
3 way you wanted it to read.

4 MR. ROSENBERG: Yes.

5 THE COURT: Oh, I see. I got it. I got it. I read
6 it wrong.

7 You're absolutely right.

8 Okay.

9 My other point was -- it's on the same issue which is
10 the approval of the new capital fee. I think that that's
11 something that should come back to the Court even if the
12 committee is on board with it. I think it should come back to
13 the Court.

14 This has sort of an either/or mechanism but I think
15 it's -- among other things, it will point to a certain
16 direction in the case and I think it's better to have it aired
17 in connection with that process.

18 The last point I would make is that even though this
19 is under Section 328(a) except for the U.S. Trustee, as in
20 other cases, I would expect that if the case is in wind down
21 mode, that is, for example, a plan has been confirmed and you
22 need an investment banker for some purposes but not at the
23 level that you need here that I would anticipate -- and it
24 would be unusual circumstances not to have it -- for there to
25 be some reduction in the monthly fee at that point.

1 MR. BUTLER: Your Honor, that's our expectation and
2 Rothschild in other transactions has been very cognizant of
3 those --

4 THE COURT: Right. They have in other transactions.
5 I just wanted to state that on the record.

6 But with, I guess, that one change then on Page 5
7 about the approval for 4(e) services, I'll approve it.

8 MR. BUTLER: Thank you, Your Honor.

9 Do you want us to adjust the order to require that
10 the new capital fee come back to the Court?

11 THE COURT: Yes, that's fine.

12 MR. BUTLER: Thank you, Your Honor.

13 Your Honor, the next matters on the agenda are
14 matters No. 25 and 26.

15 The first was a motion to vacate or amend the early
16 retiree committee order that had been honored. The motion was
17 filed -- rather than had been entered -- the motion was filed
18 at docket No. 595 and the order they were referring to was the
19 order Your Honor entered previously appointing a retiree
20 committee for hourly workers.

21 Matter No. 26 on the agenda was the official
22 committee retiree's motion for the appointment of an official
23 committee of retirees dealing with essentially salaried workers
24 and this was filed at docket No. 874.

25 Your Honor, there have been two notices of withdrawal

1 of these motions. Both have been docketed at docket No. 1295
2 and docket No. 1312 where the movants withdrew these motions
3 and they withdrew them based, I believe, on the representations
4 we made and the objections we filed to the motion and I think
5 it's useful to just briefly review that on the record here.

6 First, the debtor stated that neither the retiree
7 committee motion, nor the retiree committee order affected the
8 substantive rights and interests of any non-union retiree
9 including the movants and Your Honor may recall when we filed
10 that motion it was to deal primarily with OPED [Ph.] health
11 care benefits, among other matters, with respect to our hourly
12 workforce which was represented and to go through the process
13 that the statute contemplated on determining whether the unions
14 wanted to actually take that on on behalf of the retirees or
15 whether they wanted a separate committee appointed.

16 We went through that process, as it went to them
17 (sic) and all the unions have taken on that responsibility but
18 we said at the time that with respect to salaried workers that
19 any committee would be premature because the debtors had not
20 proposed any further reductions in health care benefits beyond
21 those very substantial reductions that have already occurred
22 over the last number of years. The health care benefits for
23 salaried workers are very different than the health care
24 benefits for hourly workers at Delphi.

25 We also stated in the papers that the international

1 unions have agreed to serve as the authorized representatives
2 of the retired hourly employees. We also have stated that we
3 had not determined if and to what extent we would modify
4 retiree medical and life insurance benefits for non-union
5 retirees.

6 Finally, we stated that if and when we sought a
7 bankruptcy court approval to eliminate or modify retiree
8 medical and life insurance benefits of non-union retired
9 employees, the debtors provide the movants notice of those
10 proceedings. So we'll give special notice to these four
11 individuals but beyond that, Your Honor, if we reach that
12 decision, I think it is more likely than not that we will come
13 to Your Honor and a file a motion for the appointment of a
14 retiree committee to deal with salaried retirees and that's a
15 bridge not yet crossed in terms of reaching a final decision.
16 What we are guided by, as I said, are the very substantial pre-
17 petition reductions in health care benefits that have occurred
18 over the last number of years that have already brought down
19 health care benefits for salaried workers into what may be
20 viewed as a competitive norm but we're addressing those issues
21 as we look at sort of everything that's on the drawing board if
22 you would.

23 THE COURT: Okay.

24 So they've withdrawn their motions in light of their
25 now understanding the fact that their request was premature.

1 MR. BUTLER: Correct, Your Honor.

2 THE COURT: Okay.

3 MR. BUTLER: Your Honor, the next motion is the
4 motion of Pillar [Ph.] House, Inc., USA, seeking an order for
5 fixing a deadline for the debtors to assume or reject an
6 executory contract at docket No. 917.

7 We filed an objection to the motion. There's been a
8 memorandum of law filed by Pillar House at docket No. 918 and
9 this matter is contested.

10 THE COURT: Okay.

11 MR. DONOVAN: Good morning, Your Honor.

12 Ted Donovan of Finkel, Goldstein for Pillar House.

13 Your Honor, we're seeking to compel the debtor to set
14 a deadline for assuming or rejecting a rather small executory
15 contract.

16 My client, pursuant to the contract, delivered to the
17 debtor's Mexican plant two pieces of equipment. They went
18 there prior to the petition to install the equipment as per the
19 contract. The debtor was not ready for the equipment to be
20 installed and the debtor now, post-petition, has requested that
21 my client complete the contract for which they will pay the
22 \$4,000.00 installation fee as an administrative claim for post-
23 petition work, presumably, although that's not even clear but
24 they've made no attempt to assume the contract and pay my
25 client the roughly \$77,000.00 that's due for the equipment and,

1 Your Honor, it places my client in a very tenuous position
2 because, obviously, if they install it then the debtor can
3 reject the contract and not have to pay the pre-petition
4 services, all of which in essence turns this into the debtor
5 cherry picking that portion of the contract it wants to have
6 done and allowing it to reject the rest of the contract.

7 It may be, Your Honor, that this is not a
8 particularly important contract as far as the debtor is
9 concerned and the debtor wants to make the decision, that's
10 fine, but, Your Honor, in our conversations with
11 representatives of the debtor and general counsel for the
12 debtor since the filing -- I don't want to say there's been a
13 threat but there's certainly been an implication that if we
14 don't go and install it we'll be liable for whatever damages
15 the company has in being unable to fulfill its contracts
16 because it doesn't have the equipment up and running and,
17 obviously, that could cause my client tremendous financial
18 hardship and risk.

19 So we're just asking that the Court have the debtor
20 look at the contract, make a decision. It's just not that big
21 an issue and the debtor ought to be able to make a decision
22 fairly quickly or advise everybody that it doesn't need to make
23 a decision quickly and it can put everything off for however
24 long it needs to and in the meantime my client would not have
25 to be responsible for fulfilling its portion of the contract.

1 THE COURT: Okay.

2 MR. BUTLER: Your Honor, this is an example of where
3 the debtors do not believe at the moment there is any good
4 business reason why the debtors should make a decision about
5 the assumption or rejection of this contract.

6 As counsel has acknowledged, this is an executory
7 contract. They are obligated to continue to perform under it
8 and we are obligated to pay for their post-petition
9 administrative claims associated with that contract which
10 simply means as it sets out for Pillar House, they have about
11 \$4,000.00 worth of additional work to do. It's work to install
12 the equipment. They're contractually obligated to do it. We
13 will pay them the \$4,000.00 for those services performed and
14 then we will address whether the executive contract ought to be
15 assumed or not ought to be assumed.

16 They're trying to use this process essentially to
17 have the debtors pay \$81,000.00 or \$82,000.00 for a \$4,000.00
18 installation job because they're trying to bootstrap their pre-
19 petition claim against the post-petition obligation for service
20 and there's really no basis to do that as we certainly
21 understand the application of the statute. In this particular
22 case this contract is not expiring in the near term, there are
23 not extraordinary circumstances --

24 THE COURT: Well, does it expire when they've
25 installed the goods?

1 MR. BUTLER: It may be fully performed at that time,
2 Your Honor, that's a different question.

3 But there's no basis under a 365, as certainly the
4 debtors understand it, for someone who has a contractual
5 obligation to install equipment post-petition, which they do,
6 to not perform those services and be paid an administrative
7 claim, be paid for those services rendered.

8 THE COURT: Are the debtors themselves facing a
9 deadline for when this needs to be installed?

10 MR. BUTLER: Your Honor, Mr. Sheehan is present and
11 can testify to this.

12 There is, I think, some need to get this equipment
13 installed here at the plant that it was delivered to. I don't
14 have the exact deadline on what that would be but they have
15 under their contract an obligation to install it now.

16 THE COURT: Is this something that any talented
17 mechanic can install or do these people have special expertise
18 that only they are necessary to install it?

19 MR. BUTLER: My understanding when I asked a question
20 similar to that, Your Honor, is that these particular -- that
21 the company that provides this equipment have the
22 qualifications to install the equipment. I don't know if we
23 couldn't go find another mechanic, maybe we could, but my
24 understanding is they need to do it and it's a pretty simple --

25 (Pause in proceedings.)

1 MR. BUTLER: As I was saying, Your Honor, I believe
2 that they have the expertise to install the equipment. I think
3 they're experienced in installing it. The debtors do not wish
4 to take on the obligation of finding someone else to install
5 that equipment and among other things invalidating the
6 warranties and other contractual agreements we have between us
7 and the supplier.

8 This particular question is do they have an
9 obligation to perform?

10 THE COURT: Well, if you reject it do you lose the
11 warranties?

12 MR. BUTLER: We may, Your Honor. I haven't examined
13 that. I mean that's the whole point. This isn't a time --
14 we're sixty days into our case. This is not the time to assume
15 or reject a contract that we don't believe is affecting if you
16 will the supply chain. This is an example of where the debtors
17 believe somebody is trying to take advantage of the system to
18 leverage their \$4,000.00 installation fee against a \$77,000.00
19 recovery of a pre-petition debt and we didn't think that's the
20 way 365 operates. They should install the equipment and they
21 should get paid their \$4,000.00 and we'll deal with the other
22 issues later.

23 THE COURT: Well, are you prepared to stipulate that
24 if they're necessary to install the equipment that their
25 administrative claim may be significantly greater than

1 \$4,000.00?

2 MR. BUTLER: Well, the contract provides for
3 \$4,000.00, Your Honor, so I'm not prepared to stipulate to --

4 THE COURT: All right.

5 I will grant the motion and give the debtors ten days
6 to decide whether to assume or reject for the following reason.
7 As set forth in the Burger Boys (sic) case as well as Adelphia
8 Communications, the Court is to consider on a case-by-case
9 basis in essence the balance of harm to the debtor and the
10 contract party.

11 Normally, that balance tips decidedly in favor of the
12 debtor. However, in the unique circumstances of this motion
13 where in essence the debtor would be forcing the contract party
14 to work through the completion of the contract so that it is no
15 longer executory, I see no meaning in the provision of the Code
16 that permits a contract party to seek to compel assumption or
17 rejection of an executory contract if in fact I granted the
18 debtor's objection here because in essence the contract would
19 be no longer executory at that point and, clearly, in my mind
20 the debtors would have been leveraging the contract party to
21 complete performance for only \$4,000.00.

22 Now, it may well be that in those ten days the debtor
23 can find someone that will do this for \$4,000.00 or even
24 slightly more and I think that's the type of flexibility that
25 in these circumstances Congress had in mind as opposed to

1 requiring full performance under these circumstances.

2 So the debtors have ten days to decide whether to
3 assume or reject.

4 MR. BUTLER: Thank you, Your Honor.

5 MR. DONOVAN: Thank you, Your Honor.

6 I'll submit an order.

7 MR. BUTLER: Your Honor, the next matter on the
8 agenda is matter No. 28. Russell Reynolds & Associates, Inc.
9 This is a motion in which we have an alleged executory contract
10 which Russell Reynolds would like to have a deadline fixed in
11 which they must assume or reject an employment recruiting
12 contract between Russell Reynolds and Delphi. Russell Reynolds
13 is an executive recruiting services firm. They were retained
14 by the debtors to solicit and vet individuals for employment by
15 the debtors as the particular position they're looking for is
16 something called the director of global architecture and
17 infrastructure. They are in the process of implementing that
18 search.

19 Pursuant to the agreement, Russell Reynolds was to
20 receive one-third of the total compensation paid to the
21 candidate hired and that was a minimum fee -- rather, against
22 that one-third, sort of a third of the compensation, they got a
23 minimum fee. The minimum fee is \$106,000.00. It was to be
24 paid in three monthly retainers. They got one of those three
25 retainers paid pre-petition, the others got not paid and were

1 caught up in the pre-petition amount.

2 They have not yet completed the search. Our view is
3 they should continue to complete the responsibilities under the
4 search and unlike, Your Honor, the last motion the debtor's
5 view here is that if in fact they complete the search and place
6 someone to the satisfaction of the debtors they will earn the
7 fee for the completion of that placement post-petition against
8 which they'll simply be crediting less of a credit than they
9 might have otherwise gotten as a minimum fee. But if they
10 never complete the search and they never perform post-petition
11 administrative services for the debtors to result in that value
12 to the estate, then they will end up having an unassumed
13 executory contract which we'll deal with at some time but if
14 it's rejected, for example, they'll have whatever claims
15 they'll have but that will be for the minimum fee. We don't
16 think we should bootstrap the minimum fee into an
17 administrative expense.

18 Our view here is they should go complete the search.
19 We get the quality candidate, that is clearly an administrative
20 expense against which the other matters would be credited.

21 THE COURT: Okay.

22 MR. BOULBOL: Good morning, Your Honor.

23 Charles Boulbol for Russell Reynolds Associates.

24 As counsel pointed out, there is an executory
25 contract between Russell Reynolds and the debtor. The

1 threshold issue presented to the Court is does the debtor and
2 Russell Reynolds have the authority of the Court to proceed
3 under this contract?

4 The position that is sought to be filled, the salary
5 level that is being discussed is about \$300,000.00, maybe a
6 little more per year. There was a candidate interviewed by the
7 vice chairman of the company yesterday so we are making
8 significant performances on behalf of the debtor post-petition
9 and if that person is hired -- and there's also a back-up
10 candidate, I understand -- there will be complete performance
11 of the intent of the agreement which is for Russell Reynolds to
12 deliver someone who will ultimately become the chief
13 information officer of the company.

14 Now, when Russell Reynolds goes out to find people to
15 take these positions, they didn't go out to find a person to
16 take this position for a bankrupt company. So the debtor has
17 completely altered the landscape under which we are proceeding.
18 Nevertheless, we have continued to perform. The cases make
19 very clear that our only alternative is to come to court and
20 ask for the contract to be assumed or rejected, assuming the
21 Court agrees that the debtor is able to proceed without prior
22 Court permission. The cases make pretty clear that real estate
23 brokers have to be retained by the Court, investment advisors
24 and the work that Russell Reynolds does is essentially
25 indistinguishable from the work that real estate brokers and

1 investment advisors do.

2 Under the terms of the contract Russell Reynolds
3 intends to have the position filled in about a three to six
4 month period. We're in that window now, although, we did agree
5 to continue the search until it was completed. Of course, now
6 the debtor has altered the landscape but, nevertheless, we seem
7 relatively confident that the job is going to be done but,
8 again, Your Honor, if Russell Reynolds is a professional, its
9 status must be decided now.

10 There are too many cases out there of real estate
11 brokers who made the application after the property was sold
12 for us to have any comfort that we have the right to proceed
13 which we have, nevertheless, done at the insistence of the
14 debtor.

15 The only case I've ever found that even remotely
16 approaches the situation that Russell Reynolds finds itself in
17 is In Re: Monarch Capital, 163 BR 899. In that case, an
18 exclusive financial advisor entered into a letter agreement
19 regarding the sale of the debtor's holdings in another company.
20 It was a success fee based fee which is essentially what
21 Russell Reynolds has agreed to here.

22 Now, counsel says Russell Reynolds gets paid only if
23 it's successful. Well, that's not what our contract says. Our
24 contract says Russell Reynolds gets paid without regard to the
25 results of the search. That's the first point.

1 The second point is the debtor needs this position
2 filled now. It is a critical position in the debtor's
3 reorganization. So for the debtor to take the position that,
4 "Well, we'll decide what to do about Russell Reynolds after
5 Russell Reynolds completely performs under the contract," is
6 completely unreasonable.

7 Now, the Court in Monarch noted that Putnam, the
8 investment advisor, should have been the subject of a retention
9 order and it explained that in great detail but because the
10 debtor forced the investment advisor to continue, the Court
11 ruled that there were post-petition performances by the
12 investment advisor that were entitled to administrative
13 priority and it described how that came about.

14 Russell Reynolds is not here saying, "We want to get
15 paid today, we want to get paid tomorrow." What we're here
16 today saying is, "We need to know what our status is legally
17 under the Bankruptcy Code because it's unclear." There has
18 never been a case to decide the issue of whether an executive
19 search firm must be specially retained.

20 I can tell Your Honor that twice in the last year for
21 Russell Reynolds in the District of Delaware we've gotten
22 retention orders and I have gone to fee application hearings
23 with my client in Delaware where we walked out of there saying,
24 "Thank goodness we had a retention order." Russell Reynolds
25 doesn't keep time sheets. They don't keep contemporaneous

1 records of individual work done. We vet the universe and we
2 try to find successful candidates and that's what we're doing
3 and that we're successfully, so far, doing for the debtor here
4 but the debtor is taking the position that, "We'll wait and see
5 how we treat Russell Reynolds after they complete performance."

6 THE COURT: Well, no, I heard Mr. Butler say that if
7 they hire the individual that you will be paid.

8 MR. BOULBOL: Well, we'll be paid what is the first
9 question? What are they going to say? They'll say the pre-
10 petition is different than the post-petition. The fact of the
11 matter is we have a fee for finding a candidate that was made -
12 - if the search was unsuccessful we're still entitled to our
13 fee so the question for the debtor is assume the contract or
14 reject it.

15 If they reject the contract we just simply stop
16 working and we have a general unsecured claim. If they want to
17 assume the contract and we completely perform which we're
18 basically on the verge of doing and even if it is unsuccessful
19 and the debtor decides, "Oh, we can't get anybody or we don't
20 want anybody or this position needs the Court approval to be
21 filled," we're still entitled to our fee and right now we're
22 entitled to a fee -- actually, in the Monarch case the Court
23 said that it was unjust to allow Putnam to only recover for its
24 expenses because I think that's what the debtor's position will
25 be here because our contract says we get to bill them post-

1 petition -- well, we get to bill them for the expenses we incur
2 in bringing candidates to interview and flying them out to
3 Michigan and that sort of thing.

4 THE COURT: Frankly, my experience has been that
5 firms like Russell Reynolds don't get retained in bankruptcy
6 cases formally.

7 Does the U.S. Trustee have a position on this?

8 MS. LEONHARD: Your Honor, I believe to my knowledge,
9 a firm like this has never been retained so I think it's
10 probably not appropriate.

11 THE COURT: The two cases you mentioned in Delaware,
12 I think, represent a change in the practice that I was familiar
13 with -- now, three or four years ago but -- it sounds to me,
14 though, what you're seeking is really different than compelling
15 assumption or rejection of a contract, it's either to file a
16 retention application or to have assurance that you will have
17 an administrative claim for your client's services. It's one
18 or the other, I think, as opposed to compelling assumption or
19 rejection of the agreement which doesn't really fit into either
20 approach, it seems to me that could be given here.

21 MR. BOULBOL: Well, if the Court approves assumption
22 or rejection of the contract then our status is solidified.

23 THE COURT: Well, I know, but I would never approve
24 the assumption or rejection of, say, Rothschild's pre-petition
25 agreement. They are clearly -- I'm just using it as an example

1 -- a professional that would be retained under 327 as opposed
2 to them moving in front of me to compel assumption or rejection
3 of their contract. That would be rejected by me automatically.

4 So, I think what you want here is reasonable comfort
5 that you'll be compensated appropriately for -- or your client
6 will be appropriately compensated for its services under 503(b)
7 and you've heard the U.S. Trustee, I don't think you will be
8 barred from that, and you've heard me, too, I don't believe
9 your client will be barred from that because there's been no
10 retention order and as far as the measure of the compensation
11 is concerned, the contract is presumptively the measure of that
12 compensation but if, for example, you're unsuccessful in
13 finding a candidate, I have the flexibility to move off of that
14 but that's the way 503(b) works.

15 So, I'll deny the motion but, I believe, you can give
16 Russell Reynolds the comfort that they will have an allowed
17 503(b) claim for their post-petition services if they're
18 successful. Presumptively, it's measured by the contract but
19 that's subject to the case law in 503(b) generally. If they're
20 unsuccessful, I imagine there will be some claim but we'll see
21 what it is.

22 MR. BOULBOL: Thank you very much.

23 THE COURT: Okay.

24 MR. BUTLER: Matter No. 29 is Bank of America's
25 Leasing and Capital, LLC's motion for adequate protection filed

1 at docket No. 1022.

2 There were several objections filed; one by Pentastar
3 [Ph.] Aviation at document No. 1251, one by the debtors at
4 docket No. 1269 and Bank of America filed a response at docket
5 No. 1284 and Mr. Berger is handling this matter for the
6 debtors.

7 THE COURT: Okay.

8 MR. MEARS: Good morning, Your Honor.

9 THE COURT: Good morning, Mr. Mears.

10 MR. MEARS: Thank you very much.

11 Your Honor, my name is Patrick Mears. I'm an
12 attorney with Barnes & Thornberg, LLP based in Grand Rapids,
13 Michigan. I am representing Bank of America, N.A., which is
14 the lessor of two corporate aircraft to Delphi Automotive
15 Systems Human Resources, LLC and I'll refer to that company as
16 Delphi HR throughout.

17 This is the preliminary hearing on the Bank of
18 America's motion for adequate protection and relief from the
19 automatic stay. It was filed on November 11th of this year.
20 The Court has not yet scheduled a final hearing. Two
21 objections to the motion have been filed as noted in the
22 agenda; one by the debtors and one by Pentastar Aviation, LLC.

23 Bank of America has responded to the two objections
24 separately. I note that the response to the Pentastar
25 objection is noted in the agenda, the response to the debtor's

1 objection is not.

2 THE COURT: I read both.

3 MR. MEARS: Okay. Great. Thank you very much.

4 Now, just some background facts and if you're
5 familiar with the papers I'll keep this relatively short.

6 Basically, these two aircraft are managed by
7 Pentastar and there is two charter agreements with a Pentastar
8 affiliate named Automotive Air Charters, Inc. and as we
9 understand it Automotive Air Charters, Inc. charters the two
10 aircraft to third parties during the times during which Delphi
11 is not using them. Automotive Air Charter then pays Delphi HR
12 a fee after, I think, deducting a certain percentage amount
13 which we have been advised by the debtors amounts to
14 approximately \$80,000.00 per month which is not an
15 inconsiderable sum.

16 I think the primary facts involved are fairly
17 straightforward. They don't appear to be disputed, although
18 there may be certainly disputed facts as we go forward, but I
19 would note that neither the DIP lenders nor the creditors
20 committee have filed a separate objection to this motion.

21 Now, really, what we're talking about here is
22 primarily the cash collateral generated by the charter
23 agreements and also any cash collateral that might be generated
24 by the management agreement or any subleases.

25 It's clear that that cash collateral has been carved

1 out of the debt. It's not subject to any liens in favor of
2 anyone else other than Bank of America and what we've gotten
3 down to -- and there have been negotiations as the debtor has
4 stated in its objection, there have been long negotiations
5 about the resolution of this motion and what it's really come
6 down to primarily is a dispute over whether or not Bank of
7 America should be entitled to receive replacement liens under
8 Section 361 of the Bankruptcy Code as adequate protection of
9 its security interests in those revenues, not only the ones in
10 existence now but also to be generated in the future.

11 It is conceivable, based upon the debtor's track
12 record and entering into agreements without Bank of America's
13 knowledge concerning the charter agreements that the debtor
14 could enter into a new charter agreement with someone else
15 without our knowledge or consent and then take the position,
16 conceivably, or someone else can take the position,
17 conceivably, that the revenue generated from those new charter
18 agreements does not constitute property that's subject to our
19 lien. It's not products or proceeds.

20 It's also possible, although I don't think the debtor
21 has said this yet, that someone might say that a charter
22 entered into between Automotive Air Charters and X on March 31,
23 2006, even though done under the existing charter agreement,
24 could be free and clear from our post-petition efforts.

25 The point is that the dollars are significant enough

1 that Bank of America does not wish to face these issues in the
2 future and it really is primarily concerned about getting a
3 replacement lien in future revenues and also in future
4 agreements.

5 It is important also to note that the leases have not
6 yet been assumed or rejected. The debtor has not yet made any
7 post-petition payments to Bank of America, though, it is using
8 the aircraft and we understand that there are post-petition
9 charters being entered into.

10 THE COURT: Isn't the debtor offering to make -- this
11 was something I was a little confused about.

12 The debtor seemed to be offering to make post-
13 petition payments but what B of A was asking for didn't seem to
14 include post-petition payments.

15 MR. MEARS: No, what the debtor offered was in the
16 context of, really, a global settlement.

17 THE COURT: Right.

18 MR. MEARS: As I understand the offer, there would
19 have been a pro-ration made as of December 6th which is the end
20 of the sixty day so-called grace period under 365(d)(10), that
21 that amount would have been paid and the debtor would have
22 continued to make future lease payments but the debtor is
23 reluctant, unwilling, to give us a replacement lien in the
24 charter revenue.

25 It is conceivable that the leases could be rejected,

1 that because of the rejection we would then have to liquidate
2 the aircraft and that we could end up, based on our estimates
3 done earlier this year that we could have a multi-million
4 dollar shortfall. At that point the only way we could cover
5 that shortfall is by recourse to this cash collateral that has
6 been building up, presumably, and hopefully been paid over to
7 Bank of America in reduction of its claims.

8 But in any event, that's been the nub of the issue.

9 THE COURT: Okay.

10 Now, I'm right, though, that there's no concession
11 that these are true leases. Right?

12 MR. MEARS: The first we heard of that was the
13 reservation of rights contained in the debtor's objection.

14 THE COURT: Okay.

15 I don't understand, though, why -- assume that the
16 debtor can adequately protect B of A for the use of the
17 airplane and for its depreciation and value which is, arguably,
18 something approaching the lease payments. Why is B of A
19 entitled to adequate protection in the form of a replacement
20 lien for its interests in the charter agreement -- it's lien on
21 the charter agreement? Assuming that the debtor doesn't use
22 the cash collateral that's generated by that charter agreement.

23 MR. MEARS: Because it's conceivable that the debtor
24 could enter into a new charter agreement and whatever small
25 amount -- that could be done tomorrow or relatively soon.

1 THE COURT: But why does that leave B of A
2 inadequately protected in respect of its lien on the charter
3 agreement?

4 MR. MEARS: Because if there's a rejection of the
5 leases and a liquidation of the collateral we will have a
6 substantial shortfall based on our estimate of the market right
7 now.

8 THE COURT: But that doesn't reflect the decline in
9 value during the post-petition period, that's just a reflection
10 of the value of the collateral.

11 Remember, I prefaced my question by saying, "assume
12 that the debtor is paying you for the post-petition use of the
13 planes under the lease."

14 MR. MEARS: Assuming that all charter revenues are
15 being escrowed and not used by the debtor?

16 THE COURT: Yes, that's what they're proposing.

17 MR. MEARS: And that we would then not be prohibited
18 -- if, indeed, the debtor entered into a new charter agreement
19 we would not be prohibited then from asking for additional
20 adequate protection?

21 THE COURT: Well, I am assuming they would have to
22 give you notice of their entry into a new agreement.

23 MR. MEARS: I hope so.

24 THE COURT: Since you have a lien on the plane and
25 the charter assumes the use of the plane.

1 I don't know whether you'd be entitled to adequate
2 protection at that point but we'd see at that point.

3 MR. MEARS: Well, the only other point is if you
4 analogize the charter payments to rents, I mean this is a
5 wasting asset. If the debtor uses that money in the course of
6 its Chapter 11 case it's gone.

7 THE COURT: But as I read it they weren't proposing
8 to use it, they're proposing to leave it aside until further
9 determination that you're adequately protected even if they do
10 use it.

11 MR. BERGER: That's correct, Judge.

12 THE COURT: So, in a way I thought you won when I
13 read what they were offering.

14 MR. MEARS: Well, the concern --

15 THE COURT: I appreciate your notice issue but given
16 that a new charter would be using either a plane you own or
17 that you have a lien on or that you own and they're leasing
18 from you, I can't imagine how they couldn't give you notice. I
19 mean I would think that the other party of the charter would
20 insist that the potential owner of the plane or the person that
21 has a lien on the plane would get notice of the new charter.

22 MR. MEARS: Well, with those remarks I guess all I
23 can suggest is that this Court schedule a final hearing and
24 then in the meantime --

25 THE COURT: You can work out the details of an

1 agreement.

2 MR. MEARS: -- we would attempt to reach a
3 settlement.

4 THE COURT: And I don't know if Pentastar is here but
5 given the factual issue that you raised in your response, that
6 seems to me to be something that should be addressed at a final
7 hearing, too, which is whether they have any right to assert
8 what they're asserting or not but given that what the debtor is
9 offering is, I assume, something they would agree with, I'm
10 assuming that would get resolved also before the final hearing.

11 So should we put this on for the 5th of January?

12 MR. MEARS: The 5th of January is fine, Your Honor.

13 Thank you.

14 THE COURT: Okay.

15 MR. BUTLER: Your Honor, the next matter on the
16 contested non-evidentiary docket is matter No. 30, Censis
17 Precision Diecasting, Inc. [Ph.]. Their motion directing the
18 debtors to determine within thirty days whether to assume or
19 reject their executory contracts with Censis Precision
20 Diecasting, Inc. at docket No. 1028 and we have filed an
21 objection, Your Honor. This matter is contested.

22 MR. MOSER: Good morning, Your Honor.

23 Eric Moser of Kirkpatrick & Lockhart, appearing on
24 behalf of Censis Diecasting.

25 If I can begin with a preliminary matter.

1 I was called in to replace lead counsel on this
2 matter approximately ten minutes ago so I have not had a chance
3 to file a pro hac vice motion. I would request the Court's
4 indulgence. I'll take care of that as soon as I leave this
5 afternoon.

6 THE COURT: Okay.

7 MR. MOSER: In a nutshell, Your Honor, Censis
8 Precision Diecasting has a number of long-term supply contracts
9 with Delphi. Delphi is far and away Censis' largest customer
10 and as a result, the outstanding arrearages under the contract
11 on a pre-petition basis and also the uncertainty going forward
12 on a post-petition basis caused a significant amount of
13 distress to their allocation determinations regarding the
14 present use of their assets.

15 Accordingly, we have asked the Court to impose a
16 deadline on Delphi, requested thirty days to make a
17 determination as to whether they will be assuming this contract
18 or not.

19 I can run through the factors in that analysis if the
20 Court would like but I believe they're fairly set forth on our
21 papers.

22 There is a small dispute, apparently, regarding the
23 calculation of the post-petition amounts due under the
24 contract. I understand that the debtor has been making some
25 payments, although, in Censis' view those are inadequate and

1 based on an inappropriate modification of certain aluminum
2 commodity costs.

3 Under the circumstances, given the fairly modest
4 amounts at issue, approximately \$2 million, I believe, are
5 currently outstanding. We think that this would impose
6 relatively little burden on Delphi to make a determination to
7 assume this contract and based on the information that I have -
8 -

9 THE COURT: Isn't it a lot of contracts? Isn't it
10 like thirty contracts?

11 MR. MOSER: It is a large number of contracts
12 although the amount due is relatively small.

13 It's of great importance to our client and it's
14 relatively insignificant in the context of the larger case.

15 THE COURT: Do these contracts have the termination
16 for convenience language that is sort of the customary Delphia
17 terms?

18 MR. MOSER: I believe that they do, Your Honor.

19 THE COURT: Okay.

20 MR. MOSER: As I said, in a nutshell, Your Honor, we
21 believe this would impose relatively little burden on Delphi to
22 make a determination regarding these contracts in a modest
23 period of time. Thirty days is what we've asked and it imposes
24 a significant burden on our client to endure the uncertainty
25 associated with having their largest customer contracts

1 outstanding and unassumed during the interim period.

2 Apart from that, I'll stand on our papers, Your
3 Honor.

4 THE COURT: Okay.

5 MR. BUTLER: Your Honor, as Your Honor recognized,
6 this motion involves obligations surrounding two long-term
7 contracts and several blanket purchase orders so there are
8 multiple agreements here.

9 I think the total amount of annual sales between
10 Censis and the debtors is about \$25 million and this is an
11 example of a contract that we are prepared to perform in the
12 interim basis post-petition but haven't made a final decision
13 about what's going to happen long-term in dealing with this and
14 this is -- I don't think Your Honor can look at the Censis
15 contracts -- there's another motion following it which is a
16 similar one -- in a vacuum or in a void because behind Censis
17 there are thousands of suppliers who have similar arrangements
18 and we're going to be dealing with that a little bit this
19 afternoon in the contracts that are coming up in the shorter
20 horizon where we risk the loss of supply.

21 Here with Censis, the debtors don't risk any loss of
22 supply. The debtors are prepared to perform under the contract
23 in terms of paying the amounts for post-petition services that
24 are goods that are delivered to them.

25 I don't believe that an issue of allocation

1 determinations, which is the harm that is being suggested here
2 by the movant, comes anywhere close to the legal standards that
3 we'd suggest that they would have to compel some type of early
4 assumption and the debtor's general position with all of these,
5 Your Honor -- I mean Your Honor understands we think the supply
6 chain is extremely important, we think it's probably the major
7 value driver of this Chapter 11 case. We are completely
8 sensitized to dealing with the supply chain but the debtors do
9 not believe that they should be making assumption or rejection
10 decisions regarding long-term contracts that come up in June or
11 December of next year until the case proceeds down the line and
12 there's more clarity about what we should be doing as it
13 relates to those transactions. There's no, we don't believe,
14 any real benefit to the estate, in fact we believe the estate
15 is harmed by forcing an early assumption and an early cure of
16 outstanding amounts as far as cure payments go for long-term
17 contracts in which the debtors believe performance is required
18 and as Your Honor noticed from Mr. Berger's presentation of
19 motions, the debtors launch of the Chapter 11 cases has been
20 quite successful with the supply chain in requiring the people
21 under their obligations under the agreements and the so-called
22 -- I guess we agreed not to use the word "rogue" -- non-
23 conforming suppliers.

24 You saw an example today of someone who, based on the
25 procedures Your Honor permitted, are in fact giving back money

1 to the estate that they otherwise compelled us to deliver to
2 them to maintain the supply chain.

3 So in sum, Your Honor, the debtors with respect to
4 this motion think it is premature to make a decision about this
5 and to impose a cure obligation payment on the estate. I would
6 simply point out, Your Honor, that if Your Honor were to grant
7 this particular motion because of the vendors' concern
8 suppliers concern about allocation determinations, I think you
9 will virtually guaranty a thousand similar motions for the next
10 hearing or a hearing shortly thereafter because if that's the
11 standard in which the 2006 and 2007 renewals can be forced and
12 they can get 100 percent cure payments for it, I'm sure people
13 would find that a much more preferable way to proceed in this
14 case then deal with the kind of measured response that we'll be
15 dealing with this in the proposal this afternoon where we have
16 contracts that have a shorter horizon that we want to renew for
17 a series of years and that have implications on the supply
18 chain -- immediate implications.

19 Your Honor, we believe the primary reason that it's
20 premature and that there's no extraordinary harm imposed on
21 this vendor, we would ask Your Honor to deny the motion.

22 THE COURT: Okay.

23 MR. ROSENBERG: Your Honor, this one is of sufficient
24 precedential value to us or potential harm, I might add, that I
25 will rise in support of the debtor's position on this one and,

1 indeed, without agreeing at all with what the debtor said with
2 respect to the motion this afternoon, payments or cure and
3 assumption of a long-term contract where there are no immediate
4 issues or risks involved is simply unwarranted and would simply
5 open the flood gates for thousands and thousands more which is
6 simply not justified on the facts.

7 THE COURT: Okay.

8 Do you have anything to say, Mr. Moser?

9 MR. MOSER: Just briefly, Your Honor.

10 I can't speak to what thousands and thousands of
11 suppliers might do tomorrow and it seems to me that in this
12 case many amounts of money have been set aside for substantial
13 but discrete groups of vendors.

14 I think the case law calls for the Court to balance
15 the harms and in this case Delphi is, proverbially speaking,
16 the 800 pound gorilla who has the vast majority of the leverage
17 in the relationship so we're exposed to a great deal more harm
18 by the uncertainty than another vendor might be if they did not
19 have that largest customer relationship.

20 Beyond that I have nothing to add.

21 THE COURT: All right.

22 I'm going to deny this motion to compel assumption or
23 rejection.

24 Again, applying the factors laid out in Burger Boys
25 and other cases including Adelphia Communications in balancing

1 the harm between the debtor and Censis as well as the status of
2 the case and particular concerns pertaining to that status as
3 it relates to these contracts and other contracts like it, it
4 seems to me that the debtor should have unfettered right at
5 this time to decide whether to assume or reject some or all or
6 none of these agreements.

7 Censis is an important supplier to Delphi and these
8 are not easily analyzed agreements. I note that the motion had
9 exhibits A through I listing all the contracts and,
10 consequently, I think that the debtor should be given more time
11 to analyze the agreements. Secondly, while there was a
12 suggestion that Delphi was not performing all of its post-
13 petition obligations when the dispute was actually discussed in
14 detail, it appears to me more likely than not that Delphi is
15 right on the dispute and not Censis, given my review of the
16 actual agreements which seem to contain the pricing provision
17 that Delphi is relying on. So Delphi does appear to be
18 performing post-petition.

19 Last, as far as any particular harm to Censis caused
20 by being in the assume or reject limbo I note, first, that only
21 in respect of one of the contracts -- the tooling contract --
22 did Censis allege that there was some significant advance
23 capital outlay or planning to be had, although that wasn't
24 really amplified beyond that general statement and, second, I
25 note that as confirmed today, these contracts all have the

1 termination for convenience language in them which in essence
2 shifts much of the risk on to the supplier anyway from Delphia
3 and weighing all of those factors it appears to me that the
4 motion should be denied.

5 MR. MOSER: Thank you, Your Honor.

6 Could I just clarify that the Court was not ruling on
7 the post-petition pricing issue?

8 THE COURT: No, I'm not ruling I'm just saying as far
9 as ongoing performance that that factor is concerned, it
10 appeared to me that the debtor had the better argument there.

11 MR. MOSER: I just wanted to preserve our rights if
12 in fact that should turn out to be a more contentious issue.

13 Thank you, Your Honor.

14 THE COURT: Okay.

15 MR. BUTLER: Your Honor, the next matter and the last
16 matter on this part of the agenda is the Selectron Manufacturer
17 de Mexico, S.A. motion filed at docket No. 1087.

18 This is a similar motion to fix a time to assume or
19 reject the time for assumption or rejection of the executory
20 contract.

21 Selectron is a provider of electronic manufacturing
22 integrated supplying chain services to Delphi. The contract at
23 issue is a long-term supply and manufacturing contract whereby
24 Delphi purchases goods, components and products.

25 It's a requirements contract and with installment

1 requirements and the matter is contested.

2 MR. LAW: Good morning, Your Honor.

3 Kenneth Law of Bialson, Bergen & Schwab [Ph.] on
4 behalf of Selectron.

5 I won't belabor the issue.

6 Our contract is very similar in many respects to the
7 last matter that was before the Court. This is a long-term
8 supply requirements contract and so we're supplying components
9 not only that we make but supplies of products that we put
10 together as subcomponents and supply to the debtor for their
11 supply chain.

12 Timing, obviously, is of the essence here. Our
13 concern and the risk here is that the risk to my client far
14 exceeds in terms of time the payment and rejection policies
15 under the contract. So in other words, we're required to
16 perform post-petition but we're also required to buy these
17 advance future parts in order to supply the requirement side of
18 the contract. It's possible that we may at any given point in
19 time be purchasing or committing to purchase items several
20 million dollars in excess of the actual payment risk that we
21 might have before we know there's a default under this
22 contract.

23 So, therefore, by continuing to perform under this
24 executory contract we're actually extending our risk by several
25 multiple factors.

1 Now, I understand the argument that was previously
2 made and it applies equally, frankly, to this case.
3 Nonetheless, I think the debtor could make a decision on this
4 within some period of time. I'm not asking for thirty days. I
5 made the offer to the debtor that I would adjourn this hearing
6 if they would make some commitment to make a decision within
7 some time period less than confirmation and they've only been
8 willing to give me a commitment to "some decision will be made
9 before the plan is confirmed."

10 Given the risk imposed on my client, I think
11 something less than that in terms of a deadline is appropriate.

12 THE COURT: Okay.

13 MR. BUTLER: Your Honor, I'll not repeat the
14 arguments I made in connection with the last motion but adopt
15 them for purposes of the record for this because it is, I
16 think, similar.

17 I would just amplify one issue and that is that --
18 this, I believe, also has a termination for convenience
19 provisions in it and there are contractual provisions and what
20 happens in those circumstances with future work that had been
21 authorized -- work in progress that had been authorized -- and
22 those provisions and the risk allocations between the supplier
23 and Delphi had been negotiated between the parties. I don't
24 think that's an assumption or rejection risk particularly
25 because to the extent that they are acquiring post-petition

1 inventory or post-petition raw materials for a post-petition
2 basis and they're going to have a claim, whether there's a
3 rejection or not under 503(b) or otherwise, they're going to
4 have administrative claims for what they're doing post-petition
5 and the allocation of risk as between the supplier and the
6 debtors is set forth in those contractual terms which may not
7 be entirely binding but, I think, will provide some guidance to
8 the Court if we ever get there and I just don't think that's a
9 basis to set a time to assume or reject a long-term contract at
10 this point in time in the case.

11 THE COURT: Okay.

12 I'm going to deny this motion as well, again,
13 applying the Burger Boys and Adelphia Communications factors.

14 It's very early in the case. The debtors stated
15 since the start of the case that one of the reasons it is in
16 Chapter 11 is to further rationalize manufacturing facilities
17 and the like and those decisions clearly have not been made yet
18 on how to do that and will take some time to work through and
19 it seems to me that this agreement is bound up in that
20 decision.

21 Secondly, the debtor is, I think, without dispute,
22 paying its way post-petition under the contract and, thirdly,
23 as Mr. Butler said, the parties already laid out between
24 themselves the allocation of risk if the contract is terminated
25 for convenience which in essence is what a rejection is and

1 while that is not the absolute measure of a post-petition claim
2 it's the clear starting point for one as far as the capital
3 allocation issues go.

4 So I believe that Selectron is reasonably protected
5 weighing the balance of all the considerations that I have to
6 keep in mind here.

7 One point that it made and you made today is the
8 financial hardship of not being paid the pre-petition amount
9 owed but, again, that is being borne by in essence all of the
10 creditors in this case. If it is so dramatic in Selectron's
11 case that it jeopardizes Selectron's business and the debtor
12 believes that business is necessary ongoing, I've already given
13 the debtor some leeway in connection with the rescue program
14 that I authorized but I don't know whether that's the case here
15 or not but it's an additional protection that Selectron has.

16 MR. LAW: Thank you, Your Honor.

17 THE COURT: Okay.

18 So, Mr. Butler, with respect to those motions you
19 should, I guess, submit orders denying the motions and if you
20 could just circulate them to the various counsel that were
21 involved.

22 MR. BUTLER: We will, Your Honor.

23 Your Honor, that completes the morning agenda and
24 we'll take up matters 21 and 32 at 2:00.

25 THE COURT: Yes.

1 I'd like to meet briefly with the counsel for the
2 committee and for the company just in my conference room back
3 here.

4 Otherwise, we'll resume at 2:00.

5 (Recess.)

6 THE COURT: All right.

7 We're back on the record in Delphi.

8 MR. BUTLER: Your Honor, we're back on the debtor's
9 second omnibus hearing agenda.

10 If I could revisit matter 20, Your Honor?

11 Matter 20 was something the Court took up this
12 morning and this was the debtor's application for the
13 employment of Jones, Lang, LaSalle Americas, Inc.

14 On the record Your Honor noted that we did not
15 implicate in the order of Section 330, the Bankruptcy Code, but
16 instead of Section 328.

17 THE COURT: Right.

18 MR. BUTLER: That was done, I was advised -- over the
19 hour we did a little research over the lunch hour just to
20 verify where we were at on that -- that was because there are
21 co-brokers in this particular retention arrangement where there
22 can be a sharing of compensation. That would be prohibited
23 under 330 and there's a lot of case law on that point and the
24 way I understand it's been handled in the District before is to
25 prove this under 328. I don't think we're not -- the

1 information is not going to be shared. The retention
2 arrangement will be made available to the U.S. Trustee and the
3 committee but I think because of the nature of that if Your
4 Honor is comfortable with a 328 rather than a 330, I just think
5 there's a technical problem.

6 THE COURT: Well, what I'm referring to is just the
7 compensation -- the review of their compensation -- of the
8 LaSalle firm's compensation would be under 330.

9 MR. BUTLER: Is the Court comfortable that we made
10 the disclosure about the co-sharing --

11 THE COURT: That's fine. No, that was clear on the
12 application.

13 MR. BUTLER: Thank you, Your Honor.

14 THE COURT: And they're not just a broker, they're
15 doing other things which is why I think it's kind of a sui
16 generous application.

17 THE COURT: If we could just take a moment for the
18 telephone.

19 (Other parties being included by telephone.)

20 THE COURT: Okay.

21 For those on the phone, we're back on the record in
22 Delphi Corporation.

23 I apologize for the glitch this morning but as I
24 recall, almost all of you were on the phone for the matter that
25 we're going to be addressing this afternoon so I don't think

1 you missed a whole lot.

2 Mr. Butler, why don't you continue.

3 MR. BUTLER: Your Honor, the next matter we had
4 carried forward from the morning agenda was matter No. 21, the
5 Consumers Energy matter and Your Honor had some questions about
6 that.

7 We went back and examined the materials and I can
8 make the following report to the Court. On October 13, 2005,
9 Consumers Power delivered a certified letter to Delphi in which
10 Consumers took the position that Delphi could not participate
11 in negotiations for favorable 2006 and beyond preferred rate
12 sets until the special manufacturing contract had been assumed.

13 The position that they were taking was in that
14 interpretation from Consumers Energy was that under their
15 general service transitional primary rate -- TPR -- Delphi was
16 not a current customer under the requirements of that rate set
17 under the availability section which states that the preferable
18 rate will be available to a current customer taking primary
19 voltage service under a special contract on December 31, 2005.
20 The position that the utility has taken is that under their
21 interpretation of the rate sets from Michigan Public Service
22 Commission and that Delphia, because the contract was not
23 assumed, would not be viewed as a current customer for purposes
24 of qualifying under that rate set.

25 We have, subsequent to receiving that letter, the

1 company through Mr. Poole, who is one of the affiants of the
2 Delphi employees available here today to testify, contacted
3 Consumers Energy and took the position that we believed Delphi,
4 because it was making timely post-petition payments under
5 unassumed contract and was entitled to receive service in the
6 ordinary course of business and in light of Your Honor's entry
7 of the 366 order that had taken place, that we believed that we
8 were eligible to participate in that process and asked them to
9 reconsider their position. Consumers reconsidered their
10 position and contacted us again on October 31st and indicated
11 that they had made a determination that Delphi would need to
12 assume the special manufacturing contract before it expired on
13 December 31, 2005 to be subject to the rate set that I
14 described, the general service transitional primary rate -- TPR
15 -- and Consumers recognized in their communications with Delphi
16 that it was entirely within Delphi's discretion whether to
17 assume or reject the contract and recognized there were various
18 uncertainties that were -- including the fact that the Michigan
19 Public Service Commission had not approved the TPR rate -- the
20 final terms of that rate for 2006 and beyond.

21 That was the exchange between the parties. We have
22 not done a regulatory review other than to take the position of
23 the utility because of the economics that both the committee
24 and we had reviewed -- it's adjusted economically, this was a
25 very good deal for us, that was the purpose of the motion -- I

1 think if that explanation is not acceptable to Your Honor, I
2 think the only thing that we could think of over the lunch
3 recess would be, Your Honor, to include a provision in the
4 assumption order that would direct Consumers Energy to file a
5 certification with this Court essentially certifying to this
6 Court that which they have directed -- they have told as a
7 public utility to the debtors -- which is that but for the
8 assumption this preferential rate would not be available. I
9 mean I suppose the other alternative is not to approve the
10 motion in which case we run the risk of losing tens of millions
11 of dollars of benefits.

12 THE COURT: Well, the utility has some rights that
13 are unique to it and other utilities under 366 but, actually,
14 as you were going through the facts I was thinking of something
15 else you could put in the order which is already somewhat
16 conditional in that the cure money is not there unless there's
17 a satisfactory new contract negotiated.

18 I think you should also put in the order that all
19 issues with respect to violation of the automatic stay are
20 preserved subject to further settlement between the parties.

21 MR. BUTLER: We'll do that, Your Honor.

22 THE COURT: Because, certainly, under the case law
23 this might fall under that category.

24 But with that caveat, I'll approve the motion.

25 MR. BUTLER: Thank you, Your Honor.

1 Your Honor, the last and final matter on today's
2 agenda is matter No. 32 which has been referred to as the
3 supplier agreement assumption procedures motion. It's the
4 debtor's motion for an order under various sections of the
5 Bankruptcy Code and Rules to prove (sic) procedures to assume
6 certain amended and restated sole support source supplier
7 agreements filed at docket No. 1098.

8 Your Honor, there were two, what I would call,
9 substantive objections filed to the motion -- to the relief
10 granted under the motion and those were filed by Wilmington
11 Trust Company as indenture trustee and by the official
12 committee of unsecured creditors.

13 I am pleased to report that we have reached a
14 settlement of those objections with those parties. The balance
15 of the objections, all of which to the extent we were aware of
16 them on the docket, are listed on the agenda as of some point
17 in time yesterday and Exhibits A and B to the debtor's response
18 filed at 4:00 p.m. yesterday afternoon lists all of the
19 objections that we were aware of as of 11:00 yesterday morning,
20 although there have been additional supplier joinders and
21 objections filed since that time.

22 Your Honor, the debtors filed the assumption
23 procedures motion on Friday, November 18, 2005. I'd like to
24 note at the outset of this hearing and express appreciation to
25 the support that has been given to the debtor's motion by the

1 debtor's two largest labor unions, the International Union of
2 United Automobile Aerospace and Agricultural Implement Workers
3 of America, otherwise known as the UAW, and the International
4 Union of Electronic Electrical Salaried Machine and Furniture
5 Workers and Communication Workers of America, the IUECWA, as
6 well as the administrative agents for the debtor's pre-petition
7 and post-petition lenders as well as the appearance today of
8 General Motors Corporation's counsel in favor of the motion.
9 That indicates widespread support from some of our more
10 significant customers; our major unions and our lenders and
11 with having now received the support of the committee and the
12 indenture trustee on terms that I will read into the record in
13 a few moments, we believe that most of the substantive
14 objections have been addressed. I think there are a number of
15 issues that suppliers would like to raise with the Court and at
16 a point in this presentation there will be an opportunity for
17 that to occur.

18 Your Honor, I'd like to note also that the debtors
19 filed as I indicated their omnibus reply to the objections
20 yesterday at docket No. 1299 together with three declarations
21 that were filed in support of the motion. Those include those
22 of John Sheehan, the vice president of corporate restructuring,
23 chief accounting officer and controller for Delphi Corporation;
24 R. David Nelson, the vice president of global supply management
25 for Delphi Corporation and Randall Eisenberg, a senior managing

1 director of FTI Consulting, Inc.

2 I'd like to give a little bit of background, Your
3 Honor, and then address the settlement that has been reached
4 with the creditors committee and the indenture trustee.

5 As Your Honor I think is familiar -- and this goes
6 back to the first day of hearings that we had in this case --
7 the preservation of the debtor's supply chain is of paramount
8 importance to preserving business enterprise value in these
9 estates. We have a number of very significant restructuring
10 issues to address in these cases. We have to address human
11 capital, we have to address our customers, we have to address
12 our portfolio and product line ends dates as this company is
13 restructured. But through all of that there is a common theme
14 and that is preservation of the supply chain provides business
15 enterprise value to the company because the supply chain and
16 our ability to operate it efficiently is paramount to be able
17 to keeping our customers happy and having them give us new
18 business awards for years out that are four, five, six or seven
19 years out. That's what drives value here.

20 Ultimately, if you don't maintain the supply chain as
21 Mr. Miller, our chief executive officer said, "If we disappoint
22 our customers by shutting down their plants then they will be
23 desource away from us both in terms of not giving us new
24 business awards and desourcing as they're entitled to -- or at
25 least they would allege they're entitled to -- desourcing away

1 from us some of our current business and that would have a
2 devastating impact on business enterprise value."

3 With the committee's support after it was organized
4 and with the support of many of the other parties in this case,
5 the debtors obtained a significant amount of first day
6 authority from Your Honor to address a series of issues in
7 connection with its supply chain and with its suppliers and
8 we've made several reports to the Court over time regarding the
9 administration of those programs but I can tell the Court today
10 that while only one of the programs was capped and the others
11 were estimated in essence we've used just under half of the
12 authority that people estimated at the time we would need to
13 use and we have provided all the reporting to the committee
14 that Your Honor is aware was to be provided and that process
15 has been, I think and I hope -- Mr. Rosenberg will be able to
16 address this later -- operated to the satisfaction of the
17 committee and the company as we move forward on that.

18 What we faced in connection with the year-end process
19 is that we had some 11,000 supply contracts that were due to
20 expire on December 31, 2005 absent a further extension and we
21 found a number of our suppliers were prepared to honor their
22 supply commitments under their supply agreements through
23 expiration but not beyond that and that there was not a well-
24 organized process. I mean we believed it was well-organized
25 from our perspective but in terms of the responses we got we

1 believed that some suppliers at least were seeking to sort of
2 take advantage of the renewal process in a way that we thought
3 was not in the best interests of the company and not in the
4 best interests of its stakeholders and so the debtors, which
5 depending on the foreign currency exchange rates, either the
6 first or second largest global supplier in this industry and
7 whose got literally tens of thousands of these contracts to
8 deal with over the next couple of years, believed that we
9 should try to establish procedures for an orderly way of
10 amending, extending and assuming these agreements. We believed
11 that there were substantial benefits to the estate and the
12 declarations that have been filed describe those in greater
13 detail and I'll try and discuss those in summary form in a few
14 minutes.

15 Over the course of the last ten days but, certainly,
16 even in discussions dating back with some our stakeholders to
17 early mid-November, around November 11th, we ended up trying to
18 figure out a set of procedures to address these problems that
19 would meet and balance the various needs of the estates in a
20 way that Your Honor ultimately could authorize and in a manner
21 that would allow the company to move forward.

22 We filed a series of papers with the Court over the
23 last couple of days and those include a black-lined order that
24 was attached as Exhibit C to our responsive brief yesterday and
25 that order as it was described in the responsive brief that we

1 filed included a series of changes to the relief that we were
2 proposing and I'll not summarize each of these there but they
3 were intended to address many of the issues that had been
4 raised and the objections that were filed and many of the
5 discussions that we have had with the committee and the
6 indenture trustee and other of our major stakeholders.

7 I'm pleased to report, Your Honor, that that order as
8 is the basis of the settlement that I want to place on the
9 record today with the further modifications that I will now
10 summarize for Your Honor and the indenture trustee that the
11 committee and the company want to -- I'm assuming Your Honor is
12 prepared to approve this order after hearing all the other
13 objections and resolving them -- we would like to be able to
14 review the order overnight and, perhaps, during the day
15 tomorrow and at some point get a revised order to chambers to
16 look at but if Your Honor is willing to go forward in this
17 we're not prepared to submit a draft order today. We hope to
18 do that in the very near future but we want to make sure we get
19 the words correct.

20 The changes that are contemplated here that resolve
21 the remaining objections of the committee are all centered on
22 two paragraphs of the order, Paragraph 2 of the order and
23 Paragraph 14 of the order. Paragraph 2 of the order is the
24 paragraph that among other things provides that the debtors
25 will permit the creditors committee to monitor the debtor's

1 conduct and performance with respect to the order by providing
2 continuing access during regular business hours to the global
3 supply management group at the company's worldwide headquarters
4 by a designated representative of the financial advisor
5 retained by the creditors committee and that also provides how
6 the information that individual gets would be treated.

7 The committee and the company believe and have agreed
8 to adding language to the paragraph of the order to make it
9 clear that the debtors and the committee are obliged to -- the
10 financial advisors are obliged to work together to establish an
11 information sharing protocol that will be reasonably acceptable
12 to the financial advisor to the creditors committee, that will
13 be subject to the practical limitations of the debtor's global
14 supply management operation and that will provide a relief
15 mechanism that if at any time during the implementation or
16 operation of this order the creditors committee is not
17 satisfied with the information processes or the information
18 that they're receiving, that they can come back to Court,
19 first, through having the debtors and the committee request,
20 Your Honor, to meet with you in a Section 105 chambers status
21 conference as a method of alternative dispute resolution and if
22 that is unsuccessful, then access to the Court for purposes of
23 an emergency hearing to seek modification of the order as
24 appropriate having to do with the issues raised by the
25 committee.

1 In connection with the information sharing protocol,
2 the committee and the company have agreed that there should be
3 some threshold for sharing information in terms of the type of
4 information that's shared and as the Court indicated in the
5 November 4th hearing, the threshold that the parties have
6 agreed is a threshold where there would be contracts considered
7 involving a supplier that had \$1 million or more of pre-
8 petition liabilities that would be part of a cure arrangement
9 and I don't mean just the contracts that would be examined at
10 that moment but basically we'd draw a line, we know what the
11 pre-petition liabilities are. We'd draw a line at the \$1
12 million level. Anybody above that who is going to get cure
13 payments against that, those contracts when they're considered
14 would fall into a separate bucket that would be subject to more
15 detailed scrutiny and analysis by the committee. We estimate
16 that that would involve -- I can't tell you the number of
17 contracts -- we estimate that more or less -- and this is not a
18 perfect number, Your Honor -- but more or less that would
19 involve 250 or so of the debtor's suppliers as opposed to
20 having that level of what I'll call scrutiny to the several
21 thousand suppliers that will be involved in this process.

22 THE COURT: In terms of number of suppliers, in terms
23 of the pre-petition trade debt, what percentage do you have
24 roughly would that be? Is it the majority of it?

25 MR. BUTLER: Your Honor, I haven't looked at the

1 October pre-petition trade debt. The amount of trade debt that
2 is subject to these contracts is in the range -- we actually
3 have an exhibit on it which I'll get into a little bit later --
4 the gross level is about \$1 billion but that number comes way
5 down when you look at what we think would be implicated in this
6 program which is less than, I think, about half of that but
7 we've got an exhibit to introduce into evidence and get some
8 estimates on that number, Your Honor.

9 THE COURT: But of that \$580 million or so, how much
10 -- do you know what these 250 or so suppliers meet? Would it
11 be half of the \$587 million?

12 MR. BUTLER: Generally, I think, Your Honor, the
13 estimate is about sixty percent.

14 THE COURT: Okay.

15 MR. BUTLER: Of the total trade debt would be
16 implicated in the suppliers with more than \$1 million of pre-
17 petition exposure.

18 THE COURT: Okay.

19 MR. BUTLER: Your Honor, with suppliers that have
20 less than \$1 million of aggregate exposure the protocol would
21 still address the less detailed information that they required
22 with respect to that.

23 In addition, Your Honor, we have agreed, there is a
24 part of our procedures in dealing with any of these
25 transactions is there is a global supply management approval

1 panel that deals with significant transactions to the company
2 and that panel or review committee -- we've committed to the
3 creditors committee that that panel would review each of the
4 contracts that would be assumed for anyone in the million
5 dollar and above threshold -- they meet above that threshold --
6 and we've also agreed that the senior member of Messerow that
7 is going to be responsible for this process on behalf of the
8 committee could participate -- and I'll say attend because
9 they're not making the decisions and the committee wants to
10 make it clear that they're not making the decisions -- but they
11 could attend and certainly be heard at those review panel
12 meetings so that they would have the actual opportunity and
13 then report back to the committee exactly how the process is
14 working because they'll be sitting in on it on those major
15 contract assumptions.

16 In order to provide that level of access to the
17 committee's financial advisors, the committee has committed to
18 the debtors that there will be a designated senior Messerow
19 executive who will be responsible for this process and at least
20 for the period dealing with the assumption of the December
21 contracts that that individual will devote the necessary time -
22 - and we think it's probably substantially their full-time at
23 the company -- and they will have such other assistance as
24 Messerow needs to have and they've told us they'll need a few
25 other Messerow folks out there to help them but what's

1 important to the company is that there be continuity of the
2 Messerow team that's there and that the senior individual
3 responsible be constant to the company so that they can have a
4 meaningful opportunity to be involved with the global supply
5 management team.

6 That's the understanding with respect to Paragraph 2
7 of the order, Your Honor, in terms of the information sharing
8 protocol and how that would operate.

9 THE COURT: Could I interrupt you just for a second?

10 Is it still the intention that this be professionals
11 eyes only, i.e., Messerow and the counsel for the committee
12 with sort of generic summaries?

13 MR. BUTLER: Yes, Your Honor. Absolutely.

14 THE COURT: Okay.

15 MR. ROSENBERG: If I may clarify, Your Honor?

16 That is correct with respect to what we are calling
17 the conforming contracts. That is the conforming settlements.

18 MR. BUTLER: Yes, I believe with respect to the non-
19 conforming settlements we're not going to let individual
20 committee members gain access to pricing information as it
21 relates to any suppliers.

22 MR. ROSENBERG: What we are going to have to do there
23 is come up with an appropriate mechanism pursuant to which if
24 Messerow wishes to recommend an objection to the committee and
25 -- Mr. Butler hasn't reached that point in his description yet

1 -- that an appropriate level of information can get to the
2 committee without disclosing names or anything else that is
3 identifying or essential but there's got to be an appropriate
4 level of disclosure there so that the committee can react
5 appropriately.

6 THE COURT: Okay.

7 MR. ROSENBERG: It would not be unlike, I believe,
8 the information that is presently supplied under the existing
9 programs by Messerow.

10 THE COURT: Okay.

11 MR. BUTLER: I have no worries that we can work
12 through that mechanic, Your Honor.

13 THE COURT: Okay.

14 MR. BUTLER: The other change, Your Honor, is to
15 Paragraph 14 of the order. Paragraph 14 of the order provides
16 the ability for the filing of a supplemental objection under
17 two conditions here; first, at any time on or after March 1,
18 2006 -- and the purpose of that particular provision, Your
19 Honor, has been that the debtors believe and I think the
20 committee now concurs that once the company runs this process
21 through the December batch of renewals we'll have a pretty good
22 population to be able to understand how the program is working
23 and it gives the committee the opportunity at any time after
24 March 1, 2006 to file an objection about the future prospective
25 application of the program. So that's not tied to any use,

1 it's just that it's an unlimited opportunity to object on and
2 after that date.

3 There's also an opportunity to object if the amounts
4 of cure contractually committed to be paid by the debtors
5 pursuant to Paragraph 8 of the order exceed a dollar amount.
6 Now, it currently says \$150 million. I'll address that in a
7 moment.

8 Exclusive of cure amounts associated with non-
9 conforming assumptions. There are two changes to that part of
10 the order. First, the number amount would move from \$150
11 million down to \$100 million and, second, the ways in which the
12 exclusion is calculated would be limited to cure amounts
13 associated with non-conforming assumptions to which the
14 committee does not object. Put another way, Your Honor, if the
15 committee under this mechanism -- if there's a non-conforming
16 assumption that comes to the committee's attention and they
17 don't like it, they object to it, they come to court, Your
18 Honor says, "Hey, debtors, I've decided you win that won, you
19 can assume it," then that dollar amount -- the cure associated
20 with that dollar amount of the Court-approved assumptions
21 counts in against the \$100 million to reduce the \$100 million
22 and then, remember, that, Your Honor, is simply a threshold.
23 The whole point of that measurement -- and Your Honor has said
24 in other hearings about the importance of having the committee
25 be able to monitor things -- that's the level where the

1 debtor's entirely comfortable with it, we've agreed to it,
2 that's the level in which the committee's currently comfortable
3 as we move into this program on the threshold.

4 Now, all the threshold does is say that either they
5 or the pre-petition agent can file an objection. Now, there's
6 a change to the next sentence and, again, I'm not trying to
7 give specific words -- just the understanding that we'll draft
8 the words later -- but in the event the party filing a
9 supplemental objection seeks an emergency hearing, that
10 sentence is going to change. First, it will change in the
11 following respects. In the event the party decides to file a
12 supplemental objection they will be required to give advance
13 notice to the debtors and to enter into a meet and confer
14 process that will take at least two business days so that we
15 have an opportunity to try to work it out and after that, that
16 sort of alternative dispute resolution mechanism occurs. If it
17 can't be worked out then a supplemental objection can be filed.
18 Under the mechanism I'm now going to describe, Your Honor, once
19 it's filed the Court would schedule that for a hearing as soon
20 as reasonably practicable for the Court. So we'd get a hearing
21 in front of Your Honor as soon as the Court's calendar would
22 permit and Your Honor would be prepared to hear it as opposed
23 to the mechanism that otherwise was in the order and the other
24 piece of this is from and after the time -- the way this
25 mechanism works, the last sentence of Paragraph 14 says, "The

1 debtor shall continue to be authorized to assume supply
2 agreements pursuant to the terms of this order following the
3 filing of the supplemental objection until the Court disposes
4 of the supplemental objection after notice and a hearing. That
5 would be modified in two respects; (1) we would be authorized
6 to do it but it would pick up the meet and confer period as
7 well as the supplemental objection and it would limit the
8 additional assumptions without Court authority to cures in the
9 aggregate of \$25 million.

10 MR. ROSENBERG: My partner, Mr. Savage [Ph.], just
11 wanted to clarify that the restriction on spending limited to
12 \$25 million commences upon the notice to the debtor of our
13 objection and the request to meet and greet.

14 MR. BUTLER: Correct.

15 MR. ROSENBERG: Okay.

16 MR. BUTLER: I think I said -- is that in the meet
17 and confer period? That's correct.

18 MR. ROSENBERG: Okay.

19 Excuse me. Meet and confer. I'm always happy to
20 greet.

21 MR. BUTLER: Your Honor, just to also be clear here
22 is in the event there's an emergency hearing, the burden of
23 proof before continuing the program would rest on the debtors.

24 Could I have a moment, Your Honor?

25 THE COURT: Yes.

1 (Pause in proceedings.)

2 MR. BUTLER: Mr. Rosenberg wasn't part of our
3 discussions this morning but I think we can move (sic) our
4 agreement along.

5 In connection where there's an objection with a non-
6 conforming agreement, the burden of proof to demonstrate to
7 Your Honor why we should be able to assume that is the debtor's
8 as well.

9 Your Honor, I believe that I have captured the
10 changes to Paragraphs 2 and 14 of the order that would cause
11 the committee and the indenture trustee to consider their
12 objections resolved.

13 THE COURT: Before I hear from them, is the amount of
14 potential preference waivers taken into account in these caps?

15 MR. BUTLER: No, Your Honor.

16 THE COURT: Okay.

17 MR. ROSENBERG: In connection with the contracts in
18 question, otherwise, it's a non-conforming agreement that
19 requires the committee consent.

20 MR. BUTLER: Correct.

21 THE COURT: Okay.

22 As to the point about the contracts in question, I
23 had a question about that definition which is in Paragraph 2.
24 It's in 2(b). It says that "these contracts don't include (b)
25 or any agreements that are not related to the continuation of

1 the supply chain" and then it has a parenthetical, "except with
2 respect to agreements related to the debtor's obligations to
3 provide manufactured goods on account of direct and indirect
4 government contracts" and my question is that an exception to -
5 - what is that an exception to? Is that an exception to the
6 supply chain? I mean it's something on top of the supply chain
7 or does it say that even with the supply chain these aren't
8 included in there?

9 MR. BUTLER: Your Honor, what we tried to do here was
10 to limit the scope of the program so we did it in two ways; the
11 first one Your Honor didn't question, it's pretty clear, if
12 someone sold their claim we're not going to assume that
13 contract for this program at least.

14 THE COURT: Right.

15 MR. BUTLER: Then the second one is we agreed to say
16 that we're not going to assume agreements that aren't related
17 to the automotive manufacturing facility locations because we
18 have other facilities that don't have quite the same supply
19 chain issues with them or we'll address them in a separate
20 motion but the government contract thing is the exception to
21 the exception because the problem is with government contracts,
22 the way in which the government contracts are written, whether
23 they're direct to us or they're indirect to the supply chain to
24 us is if you don't get the goods in to supply the government,
25 what the government's contracts say is you have to shut down

1 the plant and not supply anybody else.

2 THE COURT: Okay.

3 So it's an exception to the exception?

4 MR. BUTLER: Correct.

5 THE COURT: All right.

6 MR. BUTLER: The reason for it is because the
7 government has this special provision that basically says if
8 you can't service us, you can't service anybody else.

9 THE COURT: Okay.

10 Then Paragraph 15 was put in, I assume, was put in in
11 response to the objections; the one dealing with the KEYSIP
12 (sic)?

13 MR. BUTLER: Yes, Your Honor.

14 THE COURT: But it was a little opaque to me. What's
15 the intent of this paragraph? Is it just to say that these
16 payments don't add on to someone's right to a KEYSIP?

17 MR. BUTLER: No.

18 One of the things that was suggested is that our
19 proposed KEYSIP program is up through January 5th has an annual
20 incentive program. That annual incentive program has as its
21 proposed target measurement, EBITDAR, which is not the normal
22 EBITDA target, but like most restructurings has an "R" at the
23 end of the EBITDA calculation which means you exclude
24 restructuring charges from the measurement and there was at
25 least the implication in one of the objections that somehow or

1 other we would try to classify as restructuring expenses the
2 otherwise gap expenses that would normally go above the line,
3 in a particular monthly period we put them below the line and,
4 therefore, not subject the incentive compensation measurements
5 to those amounts and our view of that, Your Honor, was that was
6 never the intention and we thought the easiest way -- nobody
7 solicited this language from us, the debtors put this in
8 unilaterally. We want to make it very clear, you know, we know
9 this is not a KEYSIP here and we'll have another day for that
10 that we want to do it.

11 Now, what we did not do is address in this order are
12 balance sheet issues. To the extent that you pay down a pre-
13 petition liability, that's a balance sheet adjustment, that's
14 not a -- that EBITDA would never effect that issue. That's
15 simply a balance sheet issue in terms of obligations subject to
16 compromise and so we made no adjustment for that.

17 But to the suggestion that we would take anything in
18 this program and charge it to "R" for the restructuring and,
19 therefore, exempt it from the capturing within what would be
20 comprehended in the KEYSIP program as a measurement target, we
21 simply wanted the Court to be aware that wasn't the intention
22 and that's what we put it there for.

23 THE COURT: Okay.

24 So no one's potential bonus or compensation is going
25 to be structured so that they're incentivized to pay down pre-

1 petition debt?

2 MR. BUTLER: Correct.

3 THE COURT: Okay.

4 Why don't I hear from the committee and Wilmington
5 Trust then on this.

6 MR. ROSENBERG: Your Honor, the committee basically,
7 when you boil down our objection to the original motion was
8 concerned with two points; one was that the program have
9 appropriate caps attached to it or if you will at least targets
10 which the committee had an input into as to whether or not they
11 went beyond and that the program was properly monitored with
12 respect to a level of information and participation by the
13 creditors committee consistent with the extraordinary relief of
14 paying down a large amount of pre-petition debt. The committee
15 never for a moment questioned the debtor's legitimate concern
16 that the prospect of all of these expiring contracts at the end
17 of the year could create supply chain issues which were not in
18 anybody's interest whatsoever, the committee did have serious
19 problems with the debtor's initial proposal for how to solve
20 it, principally again, for the two reasons suggested that it
21 didn't seem properly targeted to those with the most clout to
22 actually cause a problem and, instead, created a situation
23 where those with the least amount of clout to cause a problem
24 were essentially being handed a gift but still left the problem
25 of those with substantial clout and what we have now negotiated

1 is an arrangement pursuant to which the committee has
2 sufficient oversight and input into the process to be
3 comfortable that the money is going where it should be going to
4 prevent interruptions to the supply chain and not simply be
5 spent kind of in an off-handed, throw it up in the air and see
6 where it sticks sort of way.

7 Accordingly, the committee is satisfied that we now
8 have an appropriate communal solution to a legitimate problem
9 or at least an appropriate communal approach to a solution to
10 what is clearly a legitimate problem and, accordingly, with the
11 changes that have been read into the record the committee is
12 satisfied that the program as amended should go forward for the
13 period as described.

14 I don't want to say on a trial basis because we're
15 quite convinced that the debtor will exercise its rights and
16 use our money appropriately but it does gives us the
17 appropriate mechanism for coming to Court with the burden
18 remaining on the debtor to justify what it is doing and the
19 continuation of the program and on that basis the oversight of
20 both the committee and the Court is properly placed and we are
21 satisfied with the proposal as it was now described to the
22 Court.

23 THE COURT: Okay. Mr. Fox.

24 MR. FOX: Thank you, Your Honor.

25 Edward Fox from Kirkpatrick & Lockhart, Nickels &

1 Grimm, LLP on behalf of Wilmington Trust Company as indenture
2 trustee.

3 Your Honor, before I address the compromise I do have
4 to ask Mr. Butler a question which is the language that was
5 added to Paragraph 12 of the order goes beyond preference
6 waivers if I understand it. I don't know why that was added or
7 why that is the case?

8 MR. BUTLER: The language that was adopted in
9 Paragraph 12 -- I think you're talking about the first
10 sentence?

11 MR. FOX: Yes.

12 MR. BUTLER: The first sentence that was added was to
13 make it very clear that with respect to an assumed contract and
14 with respect to amounts paid under that assumed contract, there
15 were no avoidance powers of the debtors that would be used in
16 connection with that. So once you've assumed a contract you
17 wouldn't have a fraudulent transfer of any other kind and uses
18 the avoidance powers of Chapter 5. That's all.

19 MR. FOX: Well, except that the motion as I
20 understood it only asked for preference waivers under 547.

21 MR. BUTLER: It's a different issue.

22 We asked for 547 preference waivers for other
23 contracts the supplier might have as the opportunity to use
24 this on a negotiating basis. I'm going to tell the score of
25 suppliers' counselors sitting in the courtroom that we don't

1 intend to pass those out either on a willy nilly basis -- to
2 use Mr. Rosenberg's words. But they were intended to say that
3 we recognize when you work with a supplier some suppliers are
4 going to want to negotiate preference waivers as to things not
5 being assumed.

6 We believe the law is generally -- and we put it in
7 for purposes of clarity because suppliers want to understand
8 this -- that as to a contract that's assumed the payments under
9 that contract are in fact protected from Chapter 5, not just
10 preferences -- once you've assumed the contract as a post-
11 petition obligation it's not a fraudulent transfer, the
12 avoidance actions are in fact taken care of which is why we
13 added Chapter 5 as opposed to -- but that Chapter 5, that first
14 sentence, Mr. Fox, is limited only to the payments made to
15 covered supplier with respect to the assumable contracts
16 actually assumed. It's a much more limited statement but it's
17 intended to be clear to that matter.

18 MR. ROSENBERG: So if I may, just to make sure we
19 have a clear record here, to the extent that a supplier asks in
20 addition for any kind of Chapter 5 type waiver with respect to
21 anything else other than the contract being assumed, that is a
22 non-conforming agreement that specifically requires the consent
23 of the committee.

24 MR. BUTLER: That's correct.

25 Or the review and objection process of the committee.

1 MR. ROSENBERG: Yes.

2 MR. FOX: Subject to seeing the actual form of order,
3 Wilmington Trust is prepared to go along with the compromises
4 being put on the record.

5 THE COURT: Okay. Thank you.

6 MR. BUTLER: Your Honor, we do want to make an
7 evidentiary record here. We don't expect to present live
8 testimony at this point and we do recognize that there have
9 been a group of very patient counsel representing a lot of
10 suppliers on the phone and in the room today that have
11 presented -- and we've had conversations with most if not all
12 of them to deal with several issues and I should say, Your
13 Honor, under the case management as Your Honor knows there is a
14 meet and confer obligation with respect to contested matters
15 and many if not most of the counsel in this case for this
16 contested matter cooperated and participated in meet and
17 confers. The committee and Wilmington Trust and the company
18 had many meet and confers. With respect to the suppliers we
19 had some smaller meet and confers and at least one large
20 organized or two large organized meet and confers and that has
21 led to a change in Paragraph 10 which I want to discuss
22 specifically and then some clarifying language throughout the
23 order that was in the order before, I'm not going to read it
24 through in detail, but it has to do with how a supplier can be
25 found to be under the terms of this order.

1 When the debtors filed this motion we were seeking to
2 use the customary arrangements in the automotive industry which
3 provides essentially that people either sign documents or they
4 perform under agreements. It is not uncommon in the industry
5 for people to receive purchase orders, ship under those
6 purchase orders without giving a written acknowledgment or
7 without signing a contract and then be paid and that's viewed
8 not only in the Uniform Commercial Code, generally, as it's
9 adopted in most states, but by custom, acceptance by
10 performance. We include that as an option under this order and
11 doing so caused a wrath of objections to be filed by a score of
12 suppliers and, you know, again, we found it in some respects
13 peculiar -- not trying to characterize the objections -- but we
14 believe that this order is a significant benefit for a number
15 of suppliers. Obviously, there are suppliers who don't want to
16 be covered by this or certainly they don't want to be covered
17 by it by performance and so we have categorically eliminated
18 that as an option.

19 The only way now that any supplier can be impacted by
20 this order in any way as it relates to their contractual
21 relationships with Delphi is in the event the covered supplier
22 actually executes and delivers to the debtors an assumption
23 agreement that comes to the debtors and at one point even in
24 Paragraph 10, Your Honor, and I would say it's an assumption
25 agreement or an agreement authorized under and subject to

1 Paragraph 6 of the order taking into account what Paragraph 6
2 permits as well, but it's not a similar document. We put in a
3 similar document to let people acknowledge in various forms
4 and enough suppliers convinced us that they didn't want that
5 and so we took it out and so it's now assumption agreement or
6 an agreement authorized under and subject to Paragraph 6 of the
7 order.

8 Therefore, there is in the debtor's view, absent the
9 signature and execution of an assumption agreement, there is no
10 opportunity for a supplier to be in any way bound by the terms
11 of this order and, therefore, because of that change we have in
12 Paragraph B of the order asked Your Honor to overrule all of
13 the objections of suppliers filed in opposition to the motion
14 to the extent they're not deemed otherwise settled or
15 withdrawn.

16 I would note, Your Honor, that there are counsel here
17 who will make the argument -- either one or fifty of them --
18 that suppliers request or that the counsel request that notice
19 of any proposed assumption be directed to specific individuals,
20 either outside counsel or to other specific individuals and the
21 debtors are resistant to that and at the appropriate time after
22 the argument is made we'll explain to you why that is. This is
23 a process done through supply management change throughout the
24 industry and a new individual supplier has got to regulate
25 itself. They can decide whether they're going to sign an

1 agreement under their internal procedures. We're not going to
2 try to complicate and we'll argue vigorously to Your Honor to
3 ask you not to require us to set up a process which is
4 different than the customary supply process in the industry.
5 If a supplier signs the contract, then they sign the contract
6 but we want to do business with the people who are customarily
7 responsible for this.

8 I also want to bring to the Court's attention as it
9 relates to suppliers an issue that has come up which we are
10 going to try to consult with the committee and seek some
11 resolution of and, perhaps, even with the U.S. Trustee.

12 There are a number of 2019 statements that have been
13 filed and others that are contemplated to be filed for an
14 individual lawyer or firm to represent multiple suppliers in
15 this case and the issues that we're talking about here all
16 relate to pricing and individual economic terms and competitive
17 information, all of which is highly confidential, represents
18 trade secrets of the company and, you know, one of the things
19 you never do in the supply management business is show how one
20 supplier structures their deal to another supplier or invite
21 the suppliers to all congregate together and figure out the
22 best way to place their products to the company. In fact,
23 there are federal laws starting with the anti-trust statutes,
24 among others, that prohibit that and provide both criminal and
25 civil sanctions.

1 In addition, confidentiality is paramount in
2 connection with this and we have met with and conferred with
3 some of the counsel who filed those statements and asked them
4 to work with us promptly to try to sort through that because
5 the debtors are not making any claims on this record but the
6 debtors are very concerned about how somebody can -- a single
7 lawyer can represent fourteen or fifteen or seventeen suppliers
8 with respect to providing advice on how pricing and
9 negotiations ought to be going vis-a-vis Delphi and look at --
10 the same person look at seventeen different suppliers economic
11 packages. I don't know how one does that without violating --
12 without that supplier violating confidentiality obligations
13 they have at Delphi and without the anti-trust statutes and
14 other laws being implicated. So it's a real concern for the
15 company. We raise it on the record only to make note of the
16 concern. We hope to work it out with people. If we can't,
17 Your Honor, the debtors will likely file some type of
18 application or motion with the Court to address that and make
19 sure that an appropriate protective order is entered to protect
20 the debtor's interests.

21 Now, Your Honor, what remains in this hearing is the
22 following. We need to present some matters into evidence and
23 then hear from the suppliers and I want to ask Your Honor how
24 you want to proceed.

25 THE COURT: Well, I'm happy to take a proffer on the

1 evidence. My main question, which I hope the proffer will
2 address, is why this concern hasn't arisen in the four or five
3 years before Delphi filed bankruptcy and in the years before
4 then when it wasn't Delphi but Delco since I gather at least
5 over the last few years with the move to real time supply
6 suppliers could have this type of leverage even aside of the
7 bankruptcy context where their contracts are not longer than a
8 year or two and they could easily hold up Delphi at the time
9 those contracts expire.

10 MR. BUTLER: Your Honor --

11 THE COURT: But other than that I mean that's my main
12 question, but if you're prepared to give a proffer I'll take a
13 proffer.

14 MR. BUTLER: Let me introduce the evidence with
15 respect that we have with respect to that and then if I can
16 briefly confer -- I may actually call someone to answer that
17 question directly to make sure Your Honor has the answer rather
18 than me try and state the proffer in a way I want to actually
19 call someone in that but let me try to get the evidence on the
20 record.

21 MR. ROSENBERG: Your Honor, before Mr. Butler begins
22 I just want to state on the record that obviously considering
23 that we have compromised as described on the record we don't
24 have any particular interest in objecting to or cross-examining
25 with respect to the proffer, but as Your Honor heard there will

1 be any number of situations where we'll come back to Court and
2 the burden of proof remains on the debtor notwithstanding that
3 we may initiate the next court appearance and accordingly I'd
4 like it clear that by not objecting to anything proffered today
5 or cross-examining we are not waiving any rights whatsoever
6 with respect to any such future hearings.

7 THE COURT: As far the Committee and Wilmington Trust
8 are concerned, I'm reviewing this under the TMT lowest bounds
9 of reasonableness standard.

10 MR. ROSENBERG: Very good, Your Honor. Thank you.

11 (Exhibit Book, Debtor's Exhibit A, Marked.)

12 MR. BUTLER: Your Honor, we prepared an exhibit book
13 that I'd like to mark Debtor's Exhibit A which has in it
14 essentially sixteen exhibits. The first is the declaration of
15 Randall Eisenberg that was filed at Docket Number 1278. The
16 second is the declaration of David Nelson filed at Docket 1279.
17 The third is the declaration of John Sheehan, Docket Number
18 1280, fourth is Exhibit A to the debtor's omnibus response,
19 fifth is Exhibit B to that response. Sixth is the Exhibit C.
20 That was the proposed assumptions order as it was filed with
21 the motion. Seven is the current blacklined order. Exhibit 8
22 is an analysis the debtor's did of AP contract assumptions.
23 Nine is the expiring contracts divisional data. Eleven, and
24 there are a series of six demonstrative exhibits. Eleven is
25 assumption procedures approval process. Twelve is the minimum

Eisenberg - Direct

103

1 required provisions. Thirteen is accumulative cash flow
2 benefit estimated by the debtors through the first quarter of
3 2007. Fourteen is the expiring direct material contracts.
4 Fifteen is unresolved direct material contracts, and sixteen is
5 the estimated pre-petition exposure for assumable agreements.

6 Exhibit 10 had been some exemplary supply responses
7 which we've eliminated and substituted in their place a
8 supplemental proffer of Mr. Eisenberg.

9 THE COURT: Okay.

10 MR. BUTLER: I'd like to move those into evidence,
11 Your Honor, if I may.

12 THE COURT: Do you have a copy of them?

13 MR. BUTLER: I do if I may present them.

14 THE COURT: Yes. Any objection to their admission
15 for the purposes of this hearing?

16 Hearing none, I'll admit them.

17 (Exhibit Book, Debtor's Exhibit A, Received.)

18 MR. BUTLER: Thank you, Your Honor.

19 Could I have a moment, Your Honor?

20 THE COURT: Yes.

21 [Pause in proceedings.]

22 MR. BUTLER: Your Honor, with the Court's permission
23 we would just call Mr. Eisenberg to the stand and let him
24 answer any questions Your Honor has on this. I think that he's
25 prepared to answer the question that you posed on the record

Eisenberg - Direct

104

1 and any other questions the Court might have.

2 THE COURT: Okay.

3 MR. BUTLER: Mr. Eisenberg.

4 THE COURT: Mr. Eisenberg, would you raise your right
5 hand, please.

6 (Randall Eisenberg, Debtor's Witness, Sworn.)

7 THE COURT: Why don't you elicit the information
8 needed for the record as to Mr. Eisenberg's qualifications.

9 DIRECT EXAMINATION

10 BY MR. BUTLER:

11 Q Mr. Eisenberg, were you present in court during the course
12 of this hearing on the assumption procedures motion?

13 A Yes, I have been.

14 Q The Court asked and wanted evidence in the record
15 regarding why this issue with contracts has come -- the renewal
16 contract renewal issues, why the debtors are experiencing
17 difficulties not that were not experienced last year or three
18 or four years ago or after the spinoff from GM or at some other
19 time? Do you have a view as to that question?

20 A Yes, I do.

21 Q Could you explain to the Court, please?

22 A Let me address the answer in two components, first from
23 looking at it from an industry perspective and then second
24 looking at it specifically from the debtor's issues.

25 As it relates to the industry one of the significant

Eisenberg - Direct

105

1 factors that have changed over the last couple of years is that
2 the industry, the automotive supplier industry is under
3 significant strain, far more than in prior years as a result of
4 a number of other suppliers who have filed for Chapter 11. The
5 knowledge that the OEMs, the original equipment manufacturers
6 are losing market share, that the OEMs are also putting
7 significant pressures on their suppliers to boost their own
8 financial profitability, and as a result of these and the
9 various Chapter 11 filings that have occurred suppliers are
10 under a greater greater strain right now to manage through
11 these difficult times.

12 I think second, from an industry's perspective the
13 suppliers in general are a lot more sophisticated than -- or
14 are sophisticated relative to suppliers in other industries and
15 therefore have a good understanding themselves and with counsel
16 of where they have specific leverage with their customers.

17 As it specifically relates to the debtors, a couple of
18 observations. First, the debtors have filed for Chapter 11 and
19 as a result suppliers have an amount of pre-petition
20 obligations that they were not paid which has burdened them
21 even further. Second, I think it has been publicly reported
22 that the debtors are going through a very significant
23 restructuring. That restructuring will impact or result in a
24 significant cost reduction and that cost reduction may include
25 the consolidation sale or closure of plants. This creates a

Eisenberg - Direct

106

1 significant amount of anxiety among the suppliers. It causes
2 suppliers to look short term at what their leverage points are
3 and their leverage points tend to be in the areas of first,
4 seeing if there's a way for their pre-petition obligations to
5 be paid during their contract period and we have some motions
6 that enable us in certain situations to do that.

7 Alternatively, when their contracts expire they recognize
8 this as a valuable leverage point for them and many suppliers
9 we use our leverage point to either increase prices, insist on
10 pre-petition amounts cured or put other -- ask for other things
11 that will enable them to get as much as they can from their
12 leverage point.

13 Those are the primary factors I think changed today
14 relative to a couple of years ago and also deals specifically
15 with the debtor's situation.

16 One last point with -- if I could, Your Honor, is
17 that the debtors, unlike many of the other companies that have
18 filed in this industry, it's a \$28 billion revenue business
19 globally. It has a significant impact relative to the other
20 suppliers in the entire automotive industry and with that
21 significant impact and -- it has caused a number of suppliers
22 to suffer greater than as a result of other Chapter 11 filings.

23 THE COURT: Am I right though that given the nature
24 of the industry the suppliers also don't have that many other
25 customers to go to?

Eisenberg - Direct

107

1 THE WITNESS: It really depends upon the supplier,
2 Your Honor. I think there are two factors to consider in that
3 regard. One, suppliers -- this debtor may be a large customer
4 and may in fact be a relatively small customer to many of our
5 suppliers. Number two, many of our suppliers recognize that
6 they cannot continue to operate if they're losing money. We
7 know we have some suppliers who even said the amount that they
8 lost in their pre-petition claim equates to a significant
9 amount of profitability for the last couple of years. That's
10 how tight the margins are.

11 So as a result many of the suppliers wonder whether
12 they should remain in this business at all absent being able to
13 create a financially sound platform to do that in.

14 THE COURT: Okay. Well, let me ask you first. Who
15 is going to make the decisions at the debtor or the debtor
16 entities about how to respond to supplier requests for new
17 contracts or offering new contracts to the suppliers? Who's in
18 charge of that and how does the chain of command go?

19 THE WITNESS: Yes. Mr. Butler, I believe we have an
20 exhibit. If it's all right with you, Your Honor, I'd like to
21 take you through that exhibit. I think it can address your
22 question most effectively.

23 THE COURT: Okay.

24 MR. BUTLER: Can I approach the witness, Your Honor?

25 THE COURT: Yes.

Eisenberg - Direct

108

1 [Pause in proceedings.]

2 MR. BUTLER: Your Honor, I believe Mr. Eisenberg is
3 speaking to Exhibit Number 11, Debtor's Exhibit 11.

4 THE WITNESS: First, the global supply management
5 group which is the supply management group within Delphi will
6 have overall responsibility for managing the process. What
7 this diagram illustrates is a tiering process which starts at
8 the lowest level which are the buyers themselves and there's --
9 as this exhibit indicates, over 600 buyers, buyers who've been
10 assigned responsibility for different suppliers and they are
11 the ones that are in direct contact with those buyers on a
12 regular basis -- I'm sorry. Those suppliers rather on a
13 regular basis and understand the debtor's leverage points with
14 those suppliers as well as the suppliers leverage points with
15 the debtors.

16 The global supply management has established a set of
17 criteria by which they will direct the buyers, their
18 negotiating parameters with each of the suppliers. To the
19 extent these buyers are able to sufficiently or adequately
20 negotiate within the parameters that are established then they
21 will have the authority to enter into those agreements on
22 behalf of the debtors with the suppliers.

23 THE COURT: Well, I'm sorry now. When you say within
24 the parameters established, amplify on that.

25 THE WITNESS: Absolutely.

Eisenberg - Direct

109

1 THE COURT: They're not going to automatically offer
2 people 75 percent cure, are they?

3 THE WITNESS: The structure, Your Honor, that we are
4 contemplating and it's still being finalized, but the structure
5 we're contemplating this to bifurcate the suppliers into two
6 categories, those with pre-petition dollars in excess of \$1
7 million and those with pre-petition dollars or exposure less
8 than \$1 million.

9 For those that have less than \$1 million, the buyers
10 would have the authority to execute into contracts whereby the
11 supplier has agreed on all of the terms that are outlined in
12 the motion and as it relates to the cure amounts to some
13 percentage and the percentage we're contemplating is up to 60
14 percent. That doesn't mean that the buyer will automatically
15 offer 60 percent. The thought process here is the buyer
16 understands a leverage point will offer what they believe is an
17 appropriate amount and will have the ability to negotiate real
18 time to attempt to come to an agreement but cannot exceed 60
19 percent.

20 For those suppliers -- let me if I could just finish
21 the other side of that coin, which is those suppliers that are
22 in excess with pre-petition balances in excess of \$1 million,
23 all of those situations will need to be approved in a much
24 senior level in the chain and that's specifically at the
25 assumption procedures approval panel that's in this box in the

Eisenberg - Direct

110

1 middle of the page.

2 So we've intentionally bifurcated --

3 THE COURT: That's the panel that Messerow can sit in
4 on?

5 THE WITNESS: Correct, Your Honor.

6 THE COURT: Okay.

7 THE WITNESS: Through this process to the extent
8 there are difficulties in getting a supplier to agree to what
9 specifically the company believes is appropriate regardless of
10 what the percentage but not in excess of 60 percent as I
11 indicated, that will escalate through this pyramid that I have
12 here in this slide all the way up to the panel and ultimately
13 the panel will make authorization for number one, any
14 deviations from the standard terms and conditions that we've
15 outlined in the motion; two, for any cure amounts that either
16 the debtor believes is unreasonable but not to exceed 60
17 percent, and then as it relates to the contracts in excess of
18 \$1 million all parameters that are being proposed.

19 THE COURT: Will the buyers have information
20 available to them showing transfers made to the supplier within
21 ninety days or the filing date that might be preferences so
22 that they could have that as part of their negotiating
23 leverage? Has that -- would that analysis be available to
24 them?

25 THE WITNESS: To the extent the analysis is

Eisenberg - Direct

111

1 available, yes. The preference --

2 THE COURT: I'm sorry, to the extent --

3 THE WITNESS: To the extent the analysis is
4 available, yes. The preference analysis has not been fully
5 completed obviously because of the timing in this case, but --

6 THE COURT: But this would just be -- I mean these
7 are suppliers that they ostensibly deal with a lot. So I would
8 think that they would at least have a list of the payments made
9 to them within ninety days of the filing date.

10 THE WITNESS: Your Honor, I believe that they will
11 understand which suppliers may have a preference and may have
12 some assessment as to a quantification to it or a financial
13 impact. I just don't want to mislead the Court to say that it
14 will be fully analyzed unless on a specific vendor basis it's
15 absolutely necessary.

16 THE COURT: Okay.

17 BY MR. BUTLER:

18 Q Mr. Eisenberg, I also wonder if you might -- just a couple
19 of questions on leverage issues between the suppliers of this
20 company and the company.

21 In your -- to the best of your knowledge, do we -- does
22 this company obtain simply raw materials or more specialized
23 components from its suppliers?

24 A A significant portion of the product purchase is highly
25 customized in specialized parts which take a significant amount

1 of time to research and obtain -- engineer and research and
2 obtain customer approval to produce.

3 Q Do you have an opinion as to whether that is the type of
4 product that Delphi obtains from its suppliers has any impact
5 on the leverage of those suppliers negotiating with Delphi?

6 A I believe it does.

7 Q What's your opinion? For the record, I asked if you had
8 an opinion. You said I believe --

9 A Excuse me. I do have an opinion and yes, I do believe
10 they have leverage. The suppliers have leverage on Delphi.

11 MR. BUTLER: Your Honor, are there any other areas of
12 examination that the Court would like to hear outside of --

13 THE COURT: Actually, I have a question for you and
14 Mr. Rosenberg which is the -- I don't know how many there are,
15 but the suppliers who have already entered into extension
16 agreements, are they non conforming or conforming at this
17 point, i.e. if they are offered new agreements along these
18 terms are they -- I'm a little confused about where they fall
19 out in this.

20 MR. BUTLER: If they fall within -- if they agree to
21 amend their previous agreements to adopt all of these new terms
22 along the lines of the motion they could be conforming. If
23 they refuse to they could be non conforming.

24 THE COURT: And it's up to the debtors to decide in
25 the first instance with the Committee oversight whether they

1 want to want to offer that to the -- offer the new terms to the
2 extension agreement parties?

3 MR. BUTLER: Correct. Your Honor, if you look at
4 Exhibit 14 you'll see that there is some direct material
5 contracts. There's a pie shape that describes the total
6 universe of contracts and gives you at least the debtor's
7 preliminary cut on those that need to be assumed through a
8 negotiation and extension and those that don't require an
9 extension. I mean it is not -- the company doesn't believe
10 that everyone is entitled to this or should get it. Obviously
11 one of the very peculiar positions of being in the fish bowl of
12 a Delphi Chapter 11 is I get to sit in a federal courtroom with
13 a Federal Judge and explain global supply management strategy
14 with sixty suppliers' counsel sitting in the back taking
15 copious notes about exactly how we're trying to manage this and
16 that puts the debtors at some disadvantage but we understand
17 it's a necessary part of this process but we are trying to keep
18 this at a summary level because we would like to be able to
19 have some strategic leverage with them.

20 But as this particular exhibit illustrates as we've
21 reviewed with the Committee, not every supplier is entitled to
22 or should receive the benefits of this order and this gives you
23 some sense of the preliminary cut of how one might approach it.

24 THE COURT: Indeed more than half, arguably more than
25 more than half.

1 MR. BUTLER: These are the total contracts, not just
2 the renewals, Your Honor. To give you a sense of --

3 THE COURT: I'm sorry. But the people who have
4 already entered into extensions, is that the 44?

5 MR. BUTLER: No, those are the people who refused to.
6 It's the 568.

7 THE COURT: 568 have already --

8 MR. BUTLER: Exhibit 15 gives you a sense, this gives
9 you a sense of the issues we're dealing with, Your Honor.
10 We've actually sent out requests -- we had a November 15th
11 deadline for all of our suppliers to renew their 2006
12 agreements. That's a normal rollover process that occurs every
13 year. Exhibit 16 gives you a sense of how many people actually
14 responded to that request.

15 I'm not trying to publish all these numbers for the
16 Financial Times, but the reality is obviously a small subset
17 have actually -- the Wall Street Journal -- a small subset have
18 actually responded at this point in time, and the debtors
19 believe and Mr. Eisenberg testified that has to do a lot to the
20 uncertainties in these cases which is the part of the unique
21 issues that we're dealing with here.

22 THE COURT: Okay. So with respect to those who have
23 already agreed -- whoever is on the phone, please put it on
24 mute. Whoever has already agreed to an extension they're going
25 to apply the same business logic to whether to grant them

1 better terms that they already agreed to?

2 MR. BUTLER: Yes, Your Honor. To the extent they
3 request them and the debtors believe that it would be in their
4 best interest because of the additional benefits that are
5 contemplated in the motion that the debtors will receive as a
6 result of assuming their contract.

7 THE COURT: That being some more flexibility and some
8 more comfort on the supplier end, those are the two benefits?

9 MR. BUTLER: I'm sorry. I couldn't hear you. Could
10 you repeat that?

11 THE COURT: There's two benefits being a) more
12 flexibility for the debtor, and b) some additional good will on
13 the supplier side.

14 MR. BUTLER: In addition to that, requiring two-year
15 terms which was --

16 THE COURT: That's the flexibility.

17 MR. BUTLER: Yes, that's correct, Your Honor.

18 THE COURT: Okay.

19 MR. BUTLER: Your Honor, with the admission of the
20 declarations and the proffers and with Mr. Eisenberg's direct
21 testimony and the admission of the other exhibits, that would
22 represent the debtor's evidentiary record and I would move Your
23 Honor to close the record.

24 THE COURT: All right.

25 MR. BUTLER: Your Honor, I also wanted to mention in

1 connection with the order today during one of the court
2 recesses the debtors agreed to make one other change to
3 Paragraph 6. Again, by way of clarification and just -- I was
4 told that if I read into this record as many as fifteen or
5 sixteen lawyers might not come to the podium. So I figured it
6 was worth it. And that is the first part of the sentence would
7 read as follows: Notwithstanding anything to the contrary
8 contained herein but subject to Paragraph 10 hereof, should a
9 covered supplier and the debtors execute an agreement that
10 deviates from any required minimum provision, and then the
11 paragraph would continue.

12 They again simply wanted to clarify that it requires the
13 execution of an agreement between the debtors and the covered
14 supplier that deviates from the required minimums. So we've
15 agreed to that language. I think that's what it said before but
16 if it will satisfy people --

17 THE COURT: In any event, these new terms, whether
18 they're the pre-approved terms or one off terms, have to be
19 agreed to in writing by the supplier. That's the point?

20 MR. BUTLER: Yes, Your Honor. From our perspective,
21 the debtor's perspective, and you've couched it as sort of
22 flexibility and good will, but from the debtor's perspective as
23 you know the required minimum provisions include the extension
24 contract for two years, the termination for convenience and
25 other provisions of our general terms being enforceable, the

1 MNS two payment terms being required as well as getting back to
2 the most favorable trade terms and practices that existed
3 between the debtors and the suppliers in the twelve months
4 prior to the petition date subject to current market terms,
5 supplier waiving the right to seek adequate assurance of future
6 performance, payment of pre-petition cure payments, a
7 limitation of those payments and a treatment of others under
8 the plan and a real definition about what happens in the event
9 of termination or rejection of an assumable agreement or the
10 breach of the agreements and what can occur.

11 Those benefits to the company, the cure payments are
12 benefit to the supplier -- to the company as Mr. Eisenberg
13 testified -- as we go through this period of addressing product
14 and portfolio and plant rationalization and alignment and
15 realignment and deal with human capital matters over the next
16 period in 2006 having these in place is very important to the
17 debtors because, again, it's the overlay, Your Honor. If you
18 think of this company -- a rationalized stable supply chain
19 that works every day and keeps our customers happy, that's what
20 creates the business enterprise value. The rest of this is how
21 one allocates it towards everybody else and how we rationalize
22 human capital and our plants and portfolio. So that's very
23 important.

24 In the declarations that have now been admitted into
25 evidence, Your Honor has an indication of the -- and testimony

1 -- more than an indication, testimony about the kinds of cash
2 flow benefits and liquidity benefits that the estate realizes
3 here. So there are real EBITDA savings, there are cash flow
4 savings. There's additional flexibility and most importantly,
5 and I think from the debtor's perspective the single most
6 important thing of all is there is a stabilization of what the
7 debtor believes to be perhaps one of the most important if not
8 the single most important value driving proposition. A well
9 managed supply chain in this business is what allows us
10 generate business enterprise value for all of our stakeholder
11 and that's the underlying -- this motion.

12 THE COURT: Okay. Well, why don't I hear from anyone
13 who wants to speak having heard all the clarifications and
14 changes to the reliefs sought.

15 MR. LEINWAND: I'm Harris Leinwand representing Baker
16 Hughes Incorporated and Baker Petrolife Corporation.

17 The debtor says that the vendors objections are not
18 substantial because they will not be bound by this order unless
19 they execute and deliver an assumption agreement. The vendors
20 have asked for something very simple, which is if a vendor
21 should write to Skadden, should write to a particular
22 individual at Skadden which could be designated, that only one
23 person has the authority to sign this assumption agreement. It
24 isn't complicated then for Delphi. It doesn't require lawyers
25 on the part of Delphi to send the assumption agreement to that

1 person.

2 We're concerned that someone who -- they're trying to
3 put a burden on the vendors to make sure that nobody signs an
4 agreement if the vendor doesn't want to sign it and that's an
5 unnecessary burden. So we think they're trying to entrap
6 vendors to sign these assumption agreements even if it's
7 clearly against the interest of that vendor.

8 THE COURT: Okay.

9 MR. BUTLER: May I respond, Your Honor?

10 Your Honor, we're not trying to entrap anyone but
11 we're also not endorsing and would ask the Court not to order a
12 disruption in the day-to-day business relationships between
13 Delphi and its supply chain. An individual supplier has a
14 supply management function and they operate with Delphi every
15 day and they're the ones to determine -- and their CEO could
16 give them direction. They could do whatever they want to when
17 they decide manage their side. But we're not looking to do and
18 we think it would be highly disruptive is to have an outside
19 lawyer send in a thing saying okay, because we're not --
20 Skadden is not involved in documenting all these things. This
21 is done on a principle to principle basis within the supply
22 chain all over the world.

23 All of a sudden say and we're to be able to go
24 forward, we want to change the ordinary course of business and
25 we want to impose to a federal court order the only way in

1 which something can be signed we think is inappropriate. If a
2 particular supplier doesn't want to sign something, that's for
3 them to manage themselves. We are not trying to change the
4 ordinary course work that occurs in an organization. I don't
5 know how these letters would be generated, who would authorize
6 them to be generated, and that's the concern. I don't know
7 whether these -- whether the people who are in this courtroom
8 are hired by the finance side of the group as opposed to the
9 supply side or however they're operating, but I don't think,
10 Your Honor, that this court order should regulate how the
11 relationships occur between those ordinary course business
12 relationships occur between the debtor and its suppliers. That
13 I think is for the suppliers to manage and for them to deal
14 with on their own.

15 THE COURT: So you're not disagreeing with Mr.
16 Leinwand insofar as this, that if buyer X at Delphi who always
17 deals with his opposite number at Selectron calls up that
18 person and that person says well, I'm sorry, I'm not
19 authorized to talk to you any more, you have to talk to so and
20 so. That's -- there's no problem with that, I assume.

21 MR. BUTLER: Absolutely none, Your Honor.

22 THE COURT: But at least then it goes through the
23 normal channels?

24 MR. BUTLER: Absolutely. But if the normal channels
25 are authorized to participate and they do participate as we've

1 said most of this will occur, we don't want to simply disrupt
2 that through a federal court order. That's our only point,
3 Your Honor. Each supplier can manage their own
4 responsibilities.

5 THE COURT: Okay.

6 MR. FARBER: Your Honor, good afternoon. My name is
7 Eugene Farber for DBM Technology. We would respectfully make
8 three points for Your Honor's consideration.

9 Number one, Your Honor, as a matter for the record we
10 do think that Your Honor ought to allow for cross-examination
11 of some of the witnesses who put in declarations before fully
12 and completely determining that they're in evidence.

13 THE COURT: I'm sorry. Everyone has that right. I
14 assumed no one wanted to cross-examine him.

15 MR. FARBER: I don't think that, Your Honor, any of
16 us -- the many of us in the back of the room felt that we had
17 the opportunity to assert that.

18 THE COURT: Well, you can do that I suppose, but let
19 me hear your objection first.

20 MR. FARBER: Your Honor, there are two points here
21 that appear to us to be very significant. With hundreds or
22 thousands of employees we think that there's not much of a
23 substantive difference between simply saying no signature and a
24 signature from anyone. We agree with the prior comment that
25 we'd like to designate who is the one who should sign.

1 We also respectfully request, Your Honor, that -- and
2 we don't understand why this is so difficult that those
3 suppliers who've spent the money to retain counsel, to be here
4 today or to interpose objections which have been served before
5 Your Honor that we ought to be served with the assumption
6 agreement. What's going to happen here, Your Honor, is that an
7 employee, probably a low level employee is going to get a
8 document we're told that -- and the form that's been sent us
9 appears to indicate that it's a document that's going to say
10 something has been approved by the Court and we think it's
11 highly likely that without additional language that indicates
12 to that employee please consult your counsel prior to signing
13 this document that lower level employees are readily going to
14 sign and just send it back and thereby bind us.

15 Your Honor, the final point that I'd like to make
16 which is relevant to that and related is we'd respectfully
17 request that there be an opt out procedure, that we have the
18 right to, as a creditor, to send a notice to all involved,
19 certainly including debtor saying we don't want this procedure.
20 Even if you get someone who will fulfill our obligations
21 contractually certainly as they exist, but we don't want to be
22 forced that if some lower level employees sign something of our
23 many hundreds or thousands of employees that that binds us to
24 an agreement and we'll have a senior official of our company
25 write a letter and say we want out. It's a settlement

1 agreement and we respectfully request that we have the right to
2 say we don't want it.

3 Your Honor, thank you.

4 THE COURT: Frankly on the first point given that
5 that's the nature of the objection I don't -- I mean you're
6 free to cross-examine, but I don't see any purpose to cross-
7 examining, at least as far as my review of the binder and the
8 witness' testimony.

9 MR. FARBER: Your Honor, when we met privately with
10 counsel for the debtor we asked why can't you send a copy of
11 this assumption agreement at the same time it goes out to those
12 who are here today. It's a limited universe. There are sixty
13 or seventy of us. The answer was it's too onerous, it's too
14 difficult to track.

15 We just can't -- we'd like to explore if Your Honor
16 would permit us through the witness and through cross-
17 examination how difficult it would be so that we who represent
18 our clients have the ability to give our clients legal advice
19 in connection with what's a very significant binding
20 essentially settlement document. That's the reason, Your
21 Honor.

22 THE COURT: I think that can be dealt with on oral
23 argument.

24 MR. BUTLER: Your Honor, responding to this. Again,
25 what we're trying to do is permit the ordinary course of

1 negotiations to go on between our very sophisticated supply
2 chain and the company and this is not a situation where the
3 bankruptcy lawyers are involved in the process. I mean Skadden
4 is not out in -- with these 800 buyers advising them on how to
5 negotiating things. This is done a principle to principle
6 basis, and if a particular supplier they want to have their
7 outside bankruptcy counsel involved they can do that. This
8 gentleman can make sure that they set those rules up right away
9 internally, but to set up a process with these 11,000 contracts
10 they've got to -- those contracts around the entire world have
11 got to bubble up to some central place in Troy and then be sent
12 to the outside counsel so we can figure out who might have
13 shown up in a bankruptcy court and then send out the bankruptcy
14 court and then goes -- this will never be done by December
15 31st, Your Honor.

16 It seems to me that these sophisticated companies can
17 in these situations, can manage themselves and they can
18 internally set up whatever controls they want to to deal with
19 this issue but that shouldn't be part of a federal court order
20 dealing with the debtor's procedures on how the debtors will
21 assume something.

22 Similarly, Your Honor, for the opt out provision, I
23 think it would be very detrimental to set up a procedure where
24 the bankruptcy lawyer is going to start saying there's an opt
25 out unless you contact me. That's not what this process is

1 about, Your Honor.

2 MR. ECKSTEIN: Good afternoon, Your Honor. Andrew
3 Eckstein, Blank Rome on behalf of Denso International America,
4 Inc.

5 Your Honor, Mr. Butler refers to this as an ordinary
6 course supply chain issue. Perhaps it is on a commercial order
7 and delivery basis, but this is an extraordinary relief and
8 it's an extraordinary deviation from bankruptcy law. This is
9 an assumption of an amended contract. This is a binding waiver
10 of rights and it's all well and good for counterparts, business
11 counterparts in the buying and selling of parts to communicate
12 with one another and communicate purchase orders. But to hand
13 somebody what is effectively a material waiver of rights and
14 say you've got to sign this to keep doing business with us is
15 something that should not happen or should not be permitted to
16 happen where somebody expresses a concern that --

17 THE COURT: You're saying this a contract of
18 adhesion?

19 MR. ECKSTEIN: Your Honor, in some ways it seems that
20 way.

21 THE COURT: I don't want to hear any more on this
22 issue about notice. I think everyone has made their points.

23 Are there other issues?

24 MR. BERKOFF: Good afternoon, Your Honor. Leslie
25 Berkoff, Morihat, Cameroff & Horowitz [Ph.]. I'm local counsel

1 for S&Z Tool & Die Robbin Industries.

2 I have with me co-counsel Dan DeMarco. I'm going to
3 make an oral application to admit him pro hoc. We will follow
4 it up with a formal application. He's a member in good
5 standing of the Ohio Bar, a partner at the firm in -- I would
6 ask you to allow him to speak today.

7 THE COURT: Okay.

8 MS. BERKOFF: Thank you Your Honor.

9 MR. DeMARCO: Thank you, Your Honor. I appreciate
10 you extending the courtesy.

11 I think it bears mentioning in connection with this,
12 the point the gentleman who preceded me on behalf of suppliers
13 attempting to make is that I would expect that if we have the
14 opportunity to ask the lawyers from Skadden Arps or the Delphi
15 representatives here today who prepared the documents that's
16 referred to the "procedures" and the documents that are
17 referred to as the "minimum requirements" and the documents
18 that are referred to as the "assumed or assumable agreements"
19 that we would find that it is not the 600 buyers at the bottom
20 of the pyramid that we heard testimony about.

21 I think the suggestion that have been made by
22 preceding counsel is trying to simply and certainly would be
23 open to other ways to simplify. Your Honor, there was
24 reference made earlier to a meet and confer yesterday at 5:00.
25 It was assembled within a couple of hours that afternoon by the

1 lawyers at Skadden Arps who reached by e-mail my co-counsel,
2 Ms. Berkoff, who filed the objection, myself who -- although I
3 didn't sign the objection was on the paper, they were able to
4 identify me and my partner whose name also appeared on the
5 pleadings. During that call, and I think it's been alluded to
6 here today, thirty some counsel perhaps participated in that
7 call. So the list already exists to provide notice to the
8 suppliers that their designated counsel can receive notice that
9 they're about to be impacted by these procedures.

10 As a final point, Your Honor, I would like the
11 opportunity to ask, although I think it's rhetorical at this
12 point, the Delphi representatives when was the last time that
13 they sent a normal rollover contract renewal that contained
14 provisions such as the cure under Section 365(b) at a
15 percentage less than a hundred percent which is not back
16 stopped by the protections of Section 503(b). When was the
17 last time such a rollover document contained a waiver of
18 preference rights, when was the last time it included the
19 waiver of any right to adequate protection for the duration of
20 the agreement. I think the answer is evident.

21 Thank you, Your Honor.

22 THE COURT: Am I right, Mr. Butler, though that this
23 is really applying as to contracts that are expiring and that
24 if you can get a good deal in connection with other contracts
25 you'll run it by the Committee?

1 MR. BUTLER: That's correct. These are extensions of
2 contracts that are expiring, Your Honor. Your Honor has in
3 the -- just to give -- to put the point in focus. Your Honor
4 has attached to the order the Delphi standard terms and
5 conditions and if you look at that they are detailed, they are
6 lengthy. They deal with, among other things, one of the most
7 important contractual rights -- debtors here which is a
8 termination for convenience provisions. Those go routinely to
9 these buyers at the other side in the supply chain management
10 and they use their lawyers and their companies to evaluate
11 that.

12 I just think that if we're going to let the global
13 supply management operation move forward it should move forward
14 through ordinary course business channels and if any particular
15 represented entity here that wants to put -- set up internal
16 procedures to refer everything to outside bankruptcy counsel
17 they can do that, but there shouldn't be an order that requires
18 that entered in this court.

19 THE COURT: Anyone else want to speak? And you
20 should assume that I read the objections as well as the
21 statements filed in support by the two unions and the agents.

22 MR. ZIMAN: Your Honor, Ken Ziman, Simpson, Thatcher
23 & Bartlett on behalf of JP Morgan Chase as pre-petition agent.

24 Mr. Butler has alluded to the fact that we also
25 support the relief requested here and especially on the

1 modified basis now negotiated we absolutely do. Maintaining
2 the supply chain, we view ourselves as being at the top of the
3 supply chain and Mr. Rosenberg made reference to our money.
4 We'd like to think it's our money until we get paid and we're
5 quite concerned about it going out to pay junior creditors and
6 we raised that concern. But on the other hand, we have a lot
7 of confidence in the global supply team at the debtors.
8 They've distinguished themselves in the way they're operated
9 with respect to the essential supplier and the other relief
10 entered on the first day and we think that this is the kind of
11 discretion they need to have to maintain that supply chain
12 going forward.

13 Thank you, Your Honor.

14 THE COURT: Thank you.

15 MR. ROSENBERG: Your Honor, just as an aside. If Mr.
16 Ziman is correct that it is his client's money being spent
17 today everybody in this room is in very, very deep trouble.

18 THE COURT: Anyone else?

19 I have in front of me a motion as modified both last
20 night and on the record today that's captioned order under 11
21 U.S.C. Sections 363(b) and 365(a) in Bankruptcy Rule 9019
22 approving procedures to assume certain amended and restated
23 sole source supplier agreements. We clarified on the record
24 what types of agreements are contemplated by that motion and
25 the different steps involved in connection with the different

1 types of agreements that have been identified.

2 This is, as the Committee pointed out, extraordinary
3 relief in that it is not a simple assumption motion. I say
4 that because the contracts that are addressed here are being
5 addressed because they're literally expiring and normally if
6 ever does one -- abnormally if ever does one assume an expiring
7 contract. So I view this, and I think it should be viewed
8 generally as primarily a motion under Section 363(b) to approve
9 parameters for negotiating the terms of new contracts and the
10 reason that Section 363(b) is particularly implicated here is
11 that one of the parameters involved is the satisfaction of a
12 portion of the non-debtor party's pre-petition claim.

13 In addition, even though this is not what you would
14 normally view as a garden variety assumption of a contract, the
15 procedures contemplate the release of preference and other
16 Chapter 5 claims with respect to the conforming contracts. So
17 in that sense again Section 363(b) and Bankruptcy Rule 9019 are
18 implicated.

19 In large measure then I need to evaluate the motion
20 in the light of those cases that have considered motions that
21 involve the payment of pre-petition debt and that's what I've
22 done here. I've done I think it in light of the standards of
23 those courts that authorized such payment and in fact I myself
24 have applied those standards earlier in the case with respect
25 to some of the first day motions that were subsequently

1 reviewed and with some modification signed off on by the
2 Creditors Committee.

3 First and foremost, I take comfort in approving the
4 motion today from the fact that the two objectants who I
5 believe were asking the right questions have now been satisfied
6 with the motion as far as it's been modified on the record,
7 those objectants being the Official Creditors Committee and
8 Wilmington Trust as indenture trustee.

9 Notwithstanding Mr. Zeman, they have the most to lose
10 as part of this motion, at least in the immediate sense,
11 because of the payment of pre-petition debt that the motion
12 contemplates and also are closer to the facts than I am and
13 have had the benefit of more discussions with the debtor than I
14 have. So I rely in large part on their judgment.

15 In addition, I'm reasonably satisfied by the
16 testimony and the proffers that this is a critical time in
17 Delphi's business with the imminent expiration of numerous
18 contracts that gives those contract parties, or at least some
19 of them, meaningful leverage for renegotiation and I believe
20 that in light of that fact the debtors do require a measure of
21 flexibility including the ability to provide for payment of
22 some pre-petition debt and release of avoidance claims in
23 connection with the renegotiation of contracts.

24 I'm also satisfied generally that the debtors
25 understand that this process is one in which they are supposed

1 to balance the harm to the estate and other creditors that
2 derives from paying pre-petition debt against the benefits of
3 new agreements and the risks of the leverage possessed by
4 various suppliers. I don't view this, and I think it needs to
5 be made clear in particular to the 660 or so buyers that that -
6 - this is not simply a Christmas present that people can hand
7 out to suppliers. I don't believe that's how the debtors have
8 approached the other critical vendor relief that I gave them
9 and one reason for the Committee's involvement is to make sure
10 that -- again, that doesn't happen here but I don't believe
11 that the debtors view it that way from the start.

12 I think it's important for the heads of the team that
13 overseeing this project, again to make clear that this is not
14 an easy giveaway for the debtor and that in addition to all the
15 other leverage that the debtor has it also has the leverage of
16 the automatic stay and the cases of which there are many which
17 say that it is a violation of the automatic stay to condition a
18 new agreement specifically on payment of pre-petition debt
19 going back to Sport Frame and the cases that follow it.

20 So I trust and I know that the Committee will be
21 looking over the debtor's shoulder on this, that the debtors
22 and in particular the buyers who will be dealing with the more
23 numerous group if smaller in terms of dollar amount group will
24 be informed by their counsel and by their advisors to consider
25 their leverage points very carefully before making offers even

1 if there's a general threshold say of 60 percent that they're
2 authorized to go up to.

3 I would also strongly hope that if there is any
4 significant preference exposure that is also an element of the
5 negotiation because again this is not as I see it a simple
6 contract assumption issue but really an issue of a continuation
7 of doing business and forms of consideration that the debtors
8 can offer up to a supplier in the negotiation for a continuing
9 business.

10 The bottom line is although I'm approving the motion
11 the authority granted here should be used conservatively and in
12 full recognition of the debtor's rights under the automatic
13 stay.

14 The objections that I believe remain from the
15 suppliers have gone to the issue of notice and whether the
16 order should provide that the debtors should only deal with or
17 at least should provide a copy of a proposed new contract only
18 to -- either only to or to counsel of record for the non-
19 contract party.

20 If this were a motion to assume contracts I'd fully
21 understand that, but I really don't view it that way. Again,
22 as I said before, it's really a motion to give the debtor some
23 flexibility in negotiating new contracts. Therefore, I don't
24 believe it is appropriate to engraft on that relief an extra
25 layer of notice which would change it from what it is to

1 something else. That being said, consistent with applicable
2 non-bankruptcy law, if any of these suppliers wants to notify
3 the appropriate people at the debtor, and I would assume that's
4 the people who are on the side, the buyer's side of dealing
5 with the suppliers. They're perfectly free to do that. It's
6 all a matter of the applicable non-bankruptcy law of authority
7 and agency and apparent authority to enter into a contract.

8 So if someone wants to get their bankruptcy lawyer
9 involved in a discussion that person can notify his or her
10 counterpart of the debtor that that's what he or she wants to
11 do. If they want to get their regular contract lawyer in part
12 of the discussion, that's fine too, or if they think that they
13 understand the deal that's being offered and to negotiate off
14 of that on their own they should certainly feel free to do that
15 and avoid the cost and expense of adding in a layer of
16 additional legal review.

17 I note on that score one of the reasons given by Mr.
18 Eisenberg for the need for this relief is that the suppliers
19 have become more sophisticated unfortunately because of the
20 state of this industry and at this point understand terms like
21 pre-petition debt and preferences and the like. Consequently,
22 I think it really is up to them to decide whether they want to
23 involve further layers of review on their end and so notify the
24 debtors. But I don't view this as certainly changing any non
25 bankruptcy law applicable to entering into contracts and if

1 someone signs an agreement that extends the term of an
2 agreement for two years I'm assuming they know what they're
3 doing.

4 Similarly, if someone doesn't sign an agreement
5 that's sent to them but continues to perform, I don't view this
6 as changing any sort of non bankruptcy law that would be
7 applicable that would say that that course of dealing after a
8 certain time may constitute a new agreement. It may not be
9 this agreement but it may be a new agreement. So this isn't
10 the only agreement that people can be bound by and that's been
11 made clear as requested by all of the supplier objectants.
12 These preferred terms or acceptable terms are only binding if
13 they sign the agreement.

14 So subject to seeing the final terms of the order,
15 and I understand you need to circulate it to the Committee and
16 to Wilmington Trust and I suppose to the banks as well, and the
17 objectants insofar as they have an interest still and I assume
18 they do because there are certain provision that you've laid
19 out you're going to be changing to reflect their concerns, I'll
20 approve the motion.

21 MR McDOWELL: Quick question as to the form of the
22 order.

23 THE COURT: I'm sorry. Who are you, sir?

24 MR. McDOWELL: Ralph McDowell, Your Honor,
25 representing the suppliers.

1 Mr. Butler alluded to some changes that came out of
2 the meet and confer with the suppliers last evening and his
3 partner, Mr. Reese circulated a redlined version. Are those
4 changes being included?

5 THE COURT: Well, except as he clarified further
6 changes on the record I assume they are, but he will -- if he
7 has your -- are you an objectant?

8 MR. McDOWELL: Yes, I am.

9 THE COURT: I'm assuming that you will circulate the
10 revised order to all of the objectants and again I'm not
11 looking for new objections. I just wanted -- this is really
12 just to make sure it conforms with what's set forth on the
13 record.

14 MR. BUTLER: Our process will be we will confer with
15 the bank agent, the Creditors Committee, Wilmington Trust and
16 get the order in the form that we're all comfortable with.
17 Then we'll send it out to the rest of the objector list.

18 THE COURT: Okay. Very well. Thank you.

19 MR. BUTLER: Your Honor, that completes the matters
20 on the November omnibus agenda. Thank you very much.

21 THE COURT: Thank you.

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1 I certify that the foregoing is a court transcript from an
2 electronic sound recording of the proceedings in the above-
3 entitled matter.

4
5 _____
6 Carla Nutter

7 Dated: 12/1/05
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